

# **EXHIBIT 32**

KELLY MCCOY

January 16, 2017

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

KIMBERLY COLE, ALAN COLE,  
JAMES MONICA, LINDA BOYD,  
MICHAEL MCMAHON, RAY  
SMINKEY, JAMES MEDDERS,  
JUDY MEDDERS, ROBERT  
PEPERNO, SARAH PEPERNO and  
KELLY MCCOY, on behalf of  
themselves and all others  
similarly situated,

CIVIL ACTION NO.

13-cv-07871-FLW-TJB

Plaintiffs,

vs.

NIBCO, INC.,

Defendant.

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DEPOSITION OF  
KELLY LEE MCCOY

January 16, 2017

8:54 a.m.

Hilton Marietta Hotel & Conference Center  
500 Powder Springs Street  
Marietta, Georgia

Deborah P. Longoria, RPR, CCR B-1557

KELLY MCCOY

January 16, 2017

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APPEARANCES

On behalf of the Plaintiffs:

LITE DEPALMA GREENBERG, LLC

JEREMY NASH, ESQ.

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On behalf of the Defendant:

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Deposition of Kelly Lee McCoy

January 16, 2017

- - -

KELLY LEE MCCOY,

having been first duly sworn or affirmed, testifies

as follows:

EXAMINATION

BY MR. WESLANDER:

Q. Mr. McCoy, good morning to you.

Could you please state your full name for

the record.

A. Kelly Lee McCoy.

Q. And what is your current residence,

Mr. McCoy?

A. 4401 Blackland Drive, Marietta.

Q. And how many years have you lived there?

A. 46.

Q. My name is Eric Weslander. I represent

NIBCO. And we met just a moment ago.

Have you ever given a deposition before?

A. No, I have not.

Q. Okay. I will talk you through a few

ground rules that I hope will make things go more

smoothly here today.

First of all, do you understand that

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Examination by Mr. Weslander

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2 Second Amended Class Action Complaint 75

3 Plaintiff Kelly McCoy's Objections and Responses to Defendant NIBCO Inc.'s First Set of Interrogatories 85

4 Invoices 87

(Original Exhibits 1 through 4 have been attached to the original transcript.)

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you're under oath today just as if you were sitting

in a courtroom in front of a judge and jury?

A. Uh-huh, I do.

Q. Okay. And we have a court reporter here

who will be taking down all of my questions and your

answers, and the transcript of this deposition will

be prepared and could be used at trial. Do you

understand that?

A. I do.

Q. Okay. And we, because we have the court

reporter, should try not to talk over each other. So

I'll try to not talk while you're talking, and if you

can let me finish a question before you give an

answer, that will help our record. Fair enough?

A. Uh-huh.

Q. Okay. And one other thing on this is,

because there's a record being prepared, try as best

you can to say yes or no, as opposed to uh-huh or

huh-uh, only because it will help get a clear record

down.

A. Understood.

Q. Okay. If you don't understand a question,

just let me know. I will do my best to rephrase it.

But if you answer, I'm going to assume that you

understood the question. Okay?

KELLY MCCOY

January 16, 2017

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| <p style="text-align: right;">Page 6</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And if you need to take a break at</p> <p>3 any time, a restroom break or to get a drink of water</p> <p>4 or for any reason, will you let me know?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Are you taking any medications or</p> <p>7 do you have anything going on in your life today that</p> <p>8 would prevent you from giving complete and truthful</p> <p>9 answers to my questions?</p> <p>10 A. No.</p> <p>11 Q. Okay. For your deposition today, what did</p> <p>12 you do to prepare?</p> <p>13 A. I reviewed all my interrogatory answers I</p> <p>14 gave some time back. We met and have spoken, you</p> <p>15 know, about what's going on. And reviewed the other</p> <p>16 documents that were sent to me; I can't remember what</p> <p>17 they were called. So I put some time into it.</p> <p>18 Q. Okay. And when you say "we met," you mean</p> <p>19 you met with Mr. Nash, your counsel?</p> <p>20 A. Yes, we spoke over the phone.</p> <p>21 Q. Okay. Do you remember specifically -- you</p> <p>22 mentioned a category of documents at the end. Can</p> <p>23 you describe specifically what those documents were?</p> <p>24 A. Well, like I said, the interrogatories,</p> <p>25 and there's some documents outlining all the</p> | <p style="text-align: right;">Page 8</p> <p>1 Q. And do you know what the allegations are</p> <p>2 that you've made against NIBCO?</p> <p>3 A. Yes.</p> <p>4 Q. What are those?</p> <p>5 A. That they have a defective product that's</p> <p>6 been put to market and in my home.</p> <p>7 Q. And when you say "defective," what do you</p> <p>8 mean by that?</p> <p>9 A. Specifically, it splits, which no plumbing</p> <p>10 should do, and leaks as a result of that split.</p> <p>11 Q. You mentioned you've lived in -- well, let</p> <p>12 me ask this. How old are you, sir?</p> <p>13 A. 46.</p> <p>14 Q. Okay. So you've lived in this house your</p> <p>15 entire life?</p> <p>16 A. Uh-huh.</p> <p>17 Q. And that's a yes?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. So you've obviously grown up in</p> <p>20 Marietta?</p> <p>21 A. Uh-huh. Yes.</p> <p>22 Q. And were you born here in Marietta?</p> <p>23 A. Born in Atlanta.</p> <p>24 Q. Okay. And you have other household</p> <p>25 members other than yourself, correct?</p> |
| <p style="text-align: right;">Page 7</p> <p>1 particulars of the case. And those are the main ones</p> <p>2 that I remember, those two.</p> <p>3 Q. Did you discuss your testimony with anyone</p> <p>4 other than your attorney?</p> <p>5 A. I did not.</p> <p>6 Q. And as far as some terminology, I'll use</p> <p>7 the term NIBCO, and do you understand that that</p> <p>8 refers to the defendant in this lawsuit, that</p> <p>9 manufactures plumbing systems and plumbing equipment?</p> <p>10 A. Yes.</p> <p>11 Q. And I'll probably use the term PEX. Do</p> <p>12 you understand that to refer to a type of plastic</p> <p>13 tubing essentially used in plumbing systems?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And I might use tubing and piping</p> <p>16 interchangeably.</p> <p>17 A. Uh-huh.</p> <p>18 Q. And if I refer to PEX, I will try to</p> <p>19 specify if I'm talking about PEX generally or a</p> <p>20 particular brand or manufacturer's PEX, such as NIBCO</p> <p>21 PEX. Okay?</p> <p>22 A. Okay. Uh-huh.</p> <p>23 Q. And do you understand, then, that you're a</p> <p>24 plaintiff in a lawsuit against NIBCO?</p> <p>25 A. I do.</p>                                                                                                                                                        | <p style="text-align: right;">Page 9</p> <p>1 A. Yes.</p> <p>2 Q. And who are they?</p> <p>3 A. My wife and two boys.</p> <p>4 Q. And what is your wife's name?</p> <p>5 A. Susan.</p> <p>6 Q. Same last name?</p> <p>7 A. Yes.</p> <p>8 Q. And your children are what age?</p> <p>9 A. They are 15 and 13.</p> <p>10 Q. Two boys?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And what is your wife's occupation?</p> <p>13 A. A housewife.</p> <p>14 Q. Okay. And what about yourself, can you</p> <p>15 tell me what you do for a living?</p> <p>16 A. Uh-huh. We wholesale swimming pool</p> <p>17 equipment.</p> <p>18 Q. What kinds of equipment?</p> <p>19 A. Mostly for in-ground Gunite pools and</p> <p>20 commercial swimming pools.</p> <p>21 Q. And how long have you been doing that?</p> <p>22 A. We have been running that business since</p> <p>23 '91.</p> <p>24 Q. Okay. What's the name of the business?</p> <p>25 A. Swimline. It's one word, S-w-i-m-l-i-n-e.</p>                                                             |

KELLY MCCOY

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| <p style="text-align: right;">Page 10</p> <p>1 Q. And what is your educational background?</p> <p>2 A. I attended Georgia Southern University for</p> <p>3 three years; and after that, attended Kennesaw State</p> <p>4 University for two years.</p> <p>5 Q. What was your field of study in?</p> <p>6 A. General business.</p> <p>7 Q. Okay. And do you have any experience with</p> <p>8 construction?</p> <p>9 A. I do.</p> <p>10 Q. Can you tell me about that?</p> <p>11 A. Is there a specific type of construction?</p> <p>12 Home construction?</p> <p>13 Q. Well, when you say you have experience</p> <p>14 with construction, what are you referring to?</p> <p>15 A. Well, I have witnessed enough homes being</p> <p>16 built and seen the reconstruction of my own to just</p> <p>17 have a general understanding of it.</p> <p>18 Q. And so your experience comes from watching</p> <p>19 construction happening?</p> <p>20 A. Observation. Sure.</p> <p>21 Q. Okay. Have you ever worked in the</p> <p>22 construction field?</p> <p>23 A. I have not.</p> <p>24 Q. Okay. And have you ever -- well, what</p> <p>25 experience do you have with installing or repairing</p> | <p style="text-align: right;">Page 12</p> <p>1 heat out of it. It was made by a company called</p> <p>2 Haier, H-a-i-e-r. And it was upstairs, running, one</p> <p>3 evening and that's what caught fire, and so that was</p> <p>4 the cause of the fire.</p> <p>5 Q. And this was approximately when?</p> <p>6 A. That was in June of 2009.</p> <p>7 Q. And so the rebuilding of the home occurred</p> <p>8 beginning when?</p> <p>9 A. We were starting to rebuild by September.</p> <p>10 Q. Okay. Of 2009?</p> <p>11 A. Yes.</p> <p>12 Q. And can you describe the configuration of</p> <p>13 your house generally?</p> <p>14 A. Yeah. It's a two-story traditional, wood</p> <p>15 siding. I'm not sure what else.</p> <p>16 Q. How many bedrooms?</p> <p>17 A. It is five bedrooms, three full baths.</p> <p>18 Q. And it has an attic -- or does it have an</p> <p>19 attic?</p> <p>20 A. Does not have an attic.</p> <p>21 Q. Okay. And it has a crawlspace, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And does it have any portion of the home</p> <p>24 with a basement, or is it all crawlspace?</p> <p>25 A. The way it is, there's a little bit of the</p> |
| <p style="text-align: right;">Page 11</p> <p>1 plumbing?</p> <p>2 A. Doing some of that myself in my own home.</p> <p>3 Working on pool plumbing, you know, in order to learn</p> <p>4 the trade a little bit.</p> <p>5 Q. And when you say doing some of that in</p> <p>6 your own home, how much of installing or repairing</p> <p>7 plumbing have you done in your own home?</p> <p>8 A. Quite a bit. I've completely torn out and</p> <p>9 remodeled a bathroom on my own, so I did all the</p> <p>10 plumbing myself.</p> <p>11 Q. When was that?</p> <p>12 A. That was in -- let's see. That was 2003.</p> <p>13 Q. Now, I understand that your home was</p> <p>14 rebuilt in 2010 because of a fire, correct?</p> <p>15 A. Uh-huh, that's correct.</p> <p>16 Q. And that's a yes?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Just to try and remind you on the</p> <p>19 court reporter there.</p> <p>20 Can you tell me what happened?</p> <p>21 A. The cause of the fire?</p> <p>22 Q. Yes.</p> <p>23 A. It was a mobile, one of those portable</p> <p>24 air-conditioning units, the kind that's freestanding</p> <p>25 and you vent the pipe through the window to get the</p>           | <p style="text-align: right;">Page 13</p> <p>1 slab down there and then crawlspace surrounding that,</p> <p>2 so in that slab is where the water heater and the</p> <p>3 HVAC and that kind of stuff are.</p> <p>4 Q. Okay. So those components are actually</p> <p>5 under the home?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Is it different -- is the</p> <p>8 configuration different from the home as it existed</p> <p>9 prior to the fire?</p> <p>10 A. No. It's the same.</p> <p>11 Q. And when you rebuilt, did you have to have</p> <p>12 any plans drawn up by an architect?</p> <p>13 A. Uh-huh. Yes, we did have plans. Yes.</p> <p>14 Q. Okay. Did those include plumbing?</p> <p>15 A. No. No. They were architectural plans.</p> <p>16 Q. Okay. Who was the architect?</p> <p>17 A. The architect was Andrew Woodward.</p> <p>18 Q. Is that someone in Marietta?</p> <p>19 A. He is in Marietta, yes.</p> <p>20 Q. Okay. But you say those plans did not</p> <p>21 include plumbing, correct?</p> <p>22 A. To the best of my recollection, they did</p> <p>23 not.</p> <p>24 Q. Do you still have a copy of those plans?</p> <p>25 A. No.</p>               |

KELLY MCCOY

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| <p style="text-align: right;">Page 14</p> <p>1 Q. And who installed the plumbing in your new</p> <p>2 home?</p> <p>3 A. Dupree Plumbing.</p> <p>4 Q. Tell me how you came to arrive at Dupree</p> <p>5 as the plumber.</p> <p>6 A. He was the subcontractor used by my</p> <p>7 general contractor for the home.</p> <p>8 Q. Did you select Dupree or did the general</p> <p>9 contractor?</p> <p>10 A. The general contractor did.</p> <p>11 Q. Okay. And did you actually select the</p> <p>12 general contractor or was that through insurance or</p> <p>13 something like that?</p> <p>14 A. I did select him.</p> <p>15 Q. And who was that?</p> <p>16 A. Roger Bridges.</p> <p>17 Q. How much input did you have into the</p> <p>18 plumbing of your home as it was being prepared to be</p> <p>19 rebuilt?</p> <p>20 A. Well, can you be more specific?</p> <p>21 Q. Sure. Did you give the general contractor</p> <p>22 direction regarding plumbing of the home?</p> <p>23 A. Only in regard to fixtures and, you know,</p> <p>24 those kinds of things, finish features. All else, we</p> <p>25 did not.</p>                                                                       | <p style="text-align: right;">Page 16</p> <p>1 home in his bid. So if he'd do plumbing, he would</p> <p>2 have a dollar figure and who was going to do the job,</p> <p>3 and that was it. So I knew who was going to do the</p> <p>4 job and just check them out online and see if, you</p> <p>5 know, they looked good to me. It was as simple as</p> <p>6 that.</p> <p>7 Q. Okay. What did you find about them when</p> <p>8 you looked them up?</p> <p>9 A. Oh, they had a nice website; good,</p> <p>10 legitimate business; lots of positive reviews and</p> <p>11 things like that. And I could see nothing wrong with</p> <p>12 them. They looked good to me.</p> <p>13 Q. Did you ever consider any other plumbers?</p> <p>14 A. I did, because I like to use people I have</p> <p>15 experience with, and I did get a competitive bid but</p> <p>16 he was too high and not as available and didn't have</p> <p>17 the manpower. So yes, I did seek out another</p> <p>18 plumber, but I chose to use -- let Roger use Dupree.</p> <p>19 Q. And who was the other plumber that you</p> <p>20 considered?</p> <p>21 A. A gentleman named Chad Thomas.</p> <p>22 Q. Okay. And how do you know Mr. Thomas?</p> <p>23 A. We've had him do some plumbing repairs at</p> <p>24 our business.</p> <p>25 Q. And do you recall -- you mentioned the bid</p> |
| <p style="text-align: right;">Page 15</p> <p>1 Q. Okay. So you did not select the plumber,</p> <p>2 correct?</p> <p>3 A. Correct. Yes.</p> <p>4 Q. And you did not select any of the</p> <p>5 materials in terms of actual plumbing -- tubing,</p> <p>6 fittings, et cetera -- that the plumber would use,</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. Correct that you did not?</p> <p>10 A. Correct that I did not.</p> <p>11 Q. Okay. And did you know anything about the</p> <p>12 experience or qualifications of Dupree Plumbing at</p> <p>13 the time that it began work on your home?</p> <p>14 A. No, other than that I looked him up online</p> <p>15 just to get a feel for what their areas of specialty</p> <p>16 were.</p> <p>17 Q. And was that before they were hired for</p> <p>18 your home, or after?</p> <p>19 A. Before.</p> <p>20 Q. Okay. So how did that -- I'm trying to</p> <p>21 imagine how that unfolded. Can you take me through</p> <p>22 the sequence of how you learned it was Dupree and</p> <p>23 what you did to look into them?</p> <p>24 A. So the way Roger did a contract was he</p> <p>25 would itemize the various phases of rebuilding the</p> | <p style="text-align: right;">Page 17</p> <p>1 was too high. Do you recall how much it was?</p> <p>2 A. I remember percentage-wise it was at least</p> <p>3 20 percent higher.</p> <p>4 Q. Okay. You mentioned you looked at the</p> <p>5 website for Dupree, kind of checked them out.</p> <p>6 A. Uh-huh.</p> <p>7 Q. Any other research that you did as far as</p> <p>8 their qualifications?</p> <p>9 A. No.</p> <p>10 Q. Who selected PEX tubing for the plumbing</p> <p>11 in your new -- in your home rebuild?</p> <p>12 A. Well, you know, I would -- I honestly</p> <p>13 don't know. I could only guess.</p> <p>14 Q. And do you have any reason why PEX was</p> <p>15 selected?</p> <p>16 A. Again, I could only guess. I mean, I</p> <p>17 think I know the answer but it's not factual. It's</p> <p>18 just a good guess.</p> <p>19 Q. All right. I won't ask you to guess.</p> <p>20 And did you know what brand of PEX was</p> <p>21 selected for the home, or brands?</p> <p>22 A. No.</p> <p>23 Q. Okay. And did you have any input on which</p> <p>24 brand or brands were used of PEX?</p> <p>25 A. No.</p>                                                                                                                                                                                                                              |

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| <p style="text-align: right;">Page 18</p> <p>1 Q. It looks as though you have PEX for both<br/>2 the supply lines, hot and cold, as well as for some<br/>3 radiant heat; is that correct?<br/>4 A. Are you speaking about the in-floor<br/>5 heating?<br/>6 Q. Correct. Let me clarify.<br/>7 At the time of your rebuild --<br/>8 A. Uh-huh.<br/>9 Q. -- I'm wondering if it's true that you had<br/>10 some radiant heating with PEX, as well as PEX for the<br/>11 supply lines.<br/>12 A. See, we don't have any radiant heating<br/>13 that uses water.<br/>14 Q. Oh, okay.<br/>15 A. Yeah. So we need to make that clear.<br/>16 Q. Tell me, you do have radiant heating in<br/>17 your home, though, correct?<br/>18 A. Yeah, in some of the tile floors, we do.<br/>19 It's wire. It's electric.<br/>20 Q. Okay. No hot-water heated radiant heating<br/>21 underneath the floors of your home?<br/>22 A. There are none, no.<br/>23 Q. Okay. Did you have any discussions -- at<br/>24 the time Dupree was preparing to do the work on your<br/>25 home, did you have any discussions with anyone from</p> | <p style="text-align: right;">Page 20</p> <p>1 before the fire?<br/>2 A. Copper.<br/>3 Q. Okay. And, let's see, any idea how long<br/>4 that copper plumbing had been in the home?<br/>5 A. Uh-huh. Most of it had been all 40 --<br/>6 let's say at that time, 40 years.<br/>7 Q. Okay. How many leaks, pipe leaks, did you<br/>8 have, in your recollection, prior to the fire in<br/>9 2009?<br/>10 A. Prior to that, I recall one little pinhole<br/>11 leak in the copper, and it was the copper down in the<br/>12 crawlspace, so it was just, you know, not causing any<br/>13 real problems. And that was the only one.<br/>14 Q. After the plumbing was installed in your<br/>15 rebuilt home, did you do anything to inspect it?<br/>16 A. Other than visual? I mean, I would say I<br/>17 visually inspected it. I'm a real stickler for<br/>18 watching people do work in my home and I did do that,<br/>19 but that's all that I did.<br/>20 Q. And what was your visual inspection?<br/>21 A. It looked good. I mean, everything was<br/>22 tight and level and plumb, and they took care to do a<br/>23 good job.<br/>24 Q. And did you have -- do you remember doing<br/>25 -- sorry. Let me rephrase.</p> |
| <p style="text-align: right;">Page 19</p> <p>1 Dupree Plumbing?<br/>2 A. Not that I recall.<br/>3 Q. Did you see them there working at the<br/>4 home?<br/>5 A. Yes, I did.<br/>6 Q. What did you see them doing; do you<br/>7 recall?<br/>8 A. Oh, I watched them do the work.<br/>9 Q. Did you ask anyone from Dupree whether<br/>10 they had used NIBCO PEX tubing before, at that time?<br/>11 A. No.<br/>12 Q. I'm sorry. I cut you off.<br/>13 You said you did not?<br/>14 A. Yes. I did not.<br/>15 Q. Okay. Did you ask Dupree or anyone from<br/>16 Dupree any questions about NIBCO PEX?<br/>17 A. No.<br/>18 Q. And did you do any independent research on<br/>19 whether PEX was right for your home?<br/>20 A. No.<br/>21 Q. Okay. And so I'm guessing that you did<br/>22 not do any specific research as to whether NIBCO PEX<br/>23 was right for your home?<br/>24 A. That's correct.<br/>25 Q. What kind of plumbing did your home have</p>                                                                                                                                                      | <p style="text-align: right;">Page 21</p> <p>1 What color was the piping after it was<br/>2 installed in the rebuilt home?<br/>3 A. Well, some was blue, some was red. Of<br/>4 course, blue, cold water; red, hot water.<br/>5 Q. Okay. And did you have any white PEX<br/>6 piping?<br/>7 A. There was some white down under the<br/>8 crawlspace.<br/>9 Q. So we have red, white, and blue tubing at<br/>10 the time of the rebuild.<br/>11 Any others; any other colors that you<br/>12 remember seeing at that point?<br/>13 A. Of PEX tubing? No.<br/>14 Q. Okay.<br/>15 A. That's all there was.<br/>16 Q. And did you do anything -- in your visual<br/>17 inspection, did you take note of how the joints of<br/>18 the plumbing, for lack of a better term, were<br/>19 constructed?<br/>20 A. Other than they were all the same. They<br/>21 use a special compression fitting with a little ring,<br/>22 a little steel ring, and that's the way every fitting<br/>23 was in the PEX tubing. And they looked like they<br/>24 were done properly, as far as I could tell.<br/>25 Q. And when did you first learn that your new</p>                                                                             |



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| <p style="text-align: right;">Page 22</p> <p>1 plumbing of the rebuilt home included NIBCO PEX?</p> <p>2 A. Well, I remember seeing the name NIBCO on</p> <p>3 the pipes as the home was being rebuilt.</p> <p>4 Q. Do you recall seeing any other brands of</p> <p>5 PEX tubing or piping in the rebuilt home?</p> <p>6 A. No, I didn't see any other brand.</p> <p>7 Q. Do you have any idea what kind of training</p> <p>8 or experience Dupree had with installing PEX?</p> <p>9 A. All I do know is that they, you know, when</p> <p>10 we got into discussion after having some problems</p> <p>11 with the pipe, that they said they had been</p> <p>12 installing it for years, in many, many, many jobs,</p> <p>13 and that it was nothing new, and I know that to be</p> <p>14 true.</p> <p>15 Q. When you say "it was nothing new,"</p> <p>16 meaning?</p> <p>17 A. It's not a new product they just started</p> <p>18 using recently. They've had experience with it.</p> <p>19 Q. And when was this discussion?</p> <p>20 A. During one of the repairs, repairing one</p> <p>21 of the leaks, the NIBCO tubing.</p> <p>22 Q. Did Dupree or your general contractor give</p> <p>23 you any information, at the time of your rebuild,</p> <p>24 regarding NIBCO's products?</p> <p>25 A. During the time of the rebuild?</p> | <p style="text-align: right;">Page 24</p> <p>1 A. You know, they go to their distributor and</p> <p>2 can get all the supplies they need, and it had to</p> <p>3 have been them.</p> <p>4 Q. But you did not play a role in selecting</p> <p>5 fittings to go with this plumbing, correct?</p> <p>6 A. That is correct.</p> <p>7 Q. And it's my understanding your home has</p> <p>8 some kind of a recirculation system with the water;</p> <p>9 is that correct?</p> <p>10 A. Uh-huh. Yes.</p> <p>11 Q. And tell me about that. How did this</p> <p>12 system come to be installed?</p> <p>13 A. At my request, they installed that. Let's</p> <p>14 see. The system was existing prior to the house</p> <p>15 fire, and so when we did the replumb, we just added</p> <p>16 that feature back in because the equipment was</p> <p>17 already there. Now, that's where the white tubing</p> <p>18 comes into play.</p> <p>19 Q. Okay. Tell me more about that, then. How</p> <p>20 is the white tubing related to the recirculation</p> <p>21 system?</p> <p>22 A. It's a separate circuit in the hot water</p> <p>23 system. So you have a line coming off the hot water</p> <p>24 heater, travels to each point of use in the house and</p> <p>25 then back. And there's a little low-flow pump that</p>     |
| <p style="text-align: right;">Page 23</p> <p>1 Q. Or afterwards.</p> <p>2 A. Or after? No.</p> <p>3 Q. Okay. So they did not give you any</p> <p>4 information regarding NIBCO products. Does that mean</p> <p>5 that they did not give you any brochures,</p> <p>6 installation guides or a warranty or anything like</p> <p>7 that?</p> <p>8 A. Yes. No paperwork or information, right.</p> <p>9 Q. All right. And do you know what type of</p> <p>10 fittings -- we talked -- I had asked about joints in</p> <p>11 the plumbing earlier.</p> <p>12 Do you know what type of fittings were</p> <p>13 installed during this 2009 to 2010 rebuild?</p> <p>14 A. Fittings used with the NIBCO tubing?</p> <p>15 Q. Correct. Correct.</p> <p>16 A. Well, when you buy that kind of tubing,</p> <p>17 there's only one kind of fitting you can use because</p> <p>18 it's specific to PEX tubing. Now, I don't know if</p> <p>19 NIBCO made the fitting or not, because on the</p> <p>20 fittings, there's no print in the molding, but I just</p> <p>21 know that they're PEX-specific fittings.</p> <p>22 Q. And who selected the PEX fittings, to the</p> <p>23 best of your knowledge?</p> <p>24 A. That had to have been the plumber.</p> <p>25 Q. Okay.</p>                                                                        | <p style="text-align: right;">Page 25</p> <p>1 just keeps it moving to all the faucets so you always</p> <p>2 have hot water there.</p> <p>3 Q. And is that white tubing, to the best of</p> <p>4 your knowledge, used anywhere else in the plumbing</p> <p>5 system other than the recirculation?</p> <p>6 A. It is not used anywhere else.</p> <p>7 Q. And who installed that?</p> <p>8 A. Let's see. Dupree did install that.</p> <p>9 Q. And do you know when?</p> <p>10 A. At the time of the rebuild, because they</p> <p>11 had to have used new pipe and fittings to reconnect</p> <p>12 to what we tore out. So it's kind of like they did</p> <p>13 the installations at the point of use but just</p> <p>14 attached it to the old equipment. Does that make</p> <p>15 sense?</p> <p>16 Q. Well, I think so. Let me ask this -- I</p> <p>17 was going to ask, and I'm glad you brought it up.</p> <p>18 Was there anything that survived the fire</p> <p>19 in terms of the plumbing equipment or plumbing</p> <p>20 system?</p> <p>21 A. Not much. The water heater did, even</p> <p>22 though I chose to replace it at my own cost, and the</p> <p>23 recirculation pump which was right off of the water</p> <p>24 heater, about a foot away. Other than that, nothing</p> <p>25 else made it.</p> |



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| <p style="text-align: right;">Page 26</p> <p>1 Q. And the recirculation pump that is there</p> <p>2 to this day, that is the one that existed prior to</p> <p>3 the fire?</p> <p>4 A. Yes.</p> <p>5 Q. And do you know -- as far as the</p> <p>6 recirculation system, do you know how often it runs</p> <p>7 or what its settings are to run during the day?</p> <p>8 A. Uh-huh. It's set to run about the time we</p> <p>9 all get up out of bed, around -- I think I've got it</p> <p>10 set to start running around 5:00 or 5:30 a.m. And</p> <p>11 then I think I've got it set to run again in the</p> <p>12 evening. And that's all.</p> <p>13 Q. And who decided the settings on this</p> <p>14 system?</p> <p>15 A. I did.</p> <p>16 Q. Okay. Do you ever adjust them?</p> <p>17 A. No.</p> <p>18 Q. Okay. And so the settings they have now</p> <p>19 would be the settings you first put in place after</p> <p>20 the rebuild?</p> <p>21 A. Yes.</p> <p>22 Q. What about an expansion tank, does your</p> <p>23 house have what's called an expansion tank?</p> <p>24 A. It does. That's code. You have to have</p> <p>25 that.</p>      | <p style="text-align: right;">Page 28</p> <p>1 of the water heater that you currently have?</p> <p>2 A. It's a 50-gallon tank. Other than that, I</p> <p>3 don't know.</p> <p>4 Q. Okay. Did you previously have a tankless</p> <p>5 system?</p> <p>6 A. We do and still do.</p> <p>7 Q. Okay. Okay. And how does the tankless</p> <p>8 system operate with the tank?</p> <p>9 A. It functions when any faucet or shower is</p> <p>10 turned on and it feeds directly into the hot water</p> <p>11 tank. So it's just one big loop.</p> <p>12 Q. Let's talk about what you remember of the</p> <p>13 leaks that are alleged in the complaint.</p> <p>14 A. Uh-huh.</p> <p>15 Q. Take me through each of those, if you can,</p> <p>16 starting with the first one.</p> <p>17 A. The first one was very close to the water</p> <p>18 heater, and it was -- you know, of course, that's in</p> <p>19 the crawlspace. And it was a narrow split in one of</p> <p>20 the return lines, and so it was in the hot water</p> <p>21 line.</p> <p>22 And I got -- and I think there's an</p> <p>23 invoice that's been submitted as evidence, but Bill</p> <p>24 Ewing replaced that for me at a cost of \$150.</p> <p>25 Q. Okay.</p> |
| <p style="text-align: right;">Page 27</p> <p>1 Q. Okay. And has it had that since you've</p> <p>2 done the rebuild?</p> <p>3 A. Yes.</p> <p>4 Q. Where is that tank?</p> <p>5 A. It sits right over the water heater,</p> <p>6 directly above.</p> <p>7 Q. And what is your understanding of the need</p> <p>8 for an expansion tank?</p> <p>9 A. I think it's a safety feature so the water</p> <p>10 has -- or the water vapor has somewhere to go in case</p> <p>11 the water overheats in the tank. It's to prevent the</p> <p>12 tank from exploding, basically.</p> <p>13 Q. And what about a release valve on your --</p> <p>14 do you have, I take it, a relief valve on the water</p> <p>15 heater?</p> <p>16 A. Yes.</p> <p>17 Q. And do you ever do anything to check if</p> <p>18 that's functioning properly?</p> <p>19 A. No, I do not.</p> <p>20 Q. Okay. And you said that you had replaced</p> <p>21 the actual water heater following the fire; is that</p> <p>22 correct?</p> <p>23 A. Uh-huh. It was replaced, you know, along</p> <p>24 with all the other plumbing.</p> <p>25 Q. Okay. And so what are the specifications</p> | <p style="text-align: right;">Page 29</p> <p>1 A. And so that was the first one.</p> <p>2 Q. And who is Bill Ewing?</p> <p>3 A. He's a contractor I've had do numerous</p> <p>4 jobs for me over the years but no plumbing under the</p> <p>5 house.</p> <p>6 Q. Any reason you called him as opposed to</p> <p>7 Dupree?</p> <p>8 A. Well, yeah, there is. Because he was</p> <p>9 already at my house one day, doing some other work,</p> <p>10 and he can do everything, and I said, Bill, go take a</p> <p>11 look at this leak. And he just went to Home Depot,</p> <p>12 got what he needed, and fixed it.</p> <p>13 Q. Okay. And what is the approximate date of</p> <p>14 this?</p> <p>15 A. That was within about -- I know it was</p> <p>16 less than a year after the completion of the rebuild,</p> <p>17 which was completed in April of 2010, and that's all</p> <p>18 I can tell you there.</p> <p>19 Q. Okay. And we have some documentation. We</p> <p>20 can look at that in a little bit.</p> <p>21 A. Okay.</p> <p>22 Q. This is not a memory contest. I just</p> <p>23 wanted to ask, you know, what you do recall as you</p> <p>24 sit here today, so...</p> <p>25 A. Okay.</p>                        |

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| <p style="text-align: right;">Page 30</p> <p>1 Q. And in this case, do you recall the color<br/>2 and the size of the pipe that was repaired?</p> <p>3 A. Well, it wasn't a pipe. The split was<br/>4 about three-quarters of inch maybe. And they make a<br/>5 fitting, it's called a shark bite fitting, and it's<br/>6 about that long (indicating). So the replaced<br/>7 section was just a fitting. There was no other pipe<br/>8 used there.</p> <p>9 THE COURT REPORTER: Shark what?<br/>10 THE WITNESS: Shark bite.<br/>11 THE COURT REPORTER: Oh. Thank you.</p> <p>12 Q. (By Mr. Weslander) So the split was --<br/>13 help me out here. The split was in the fitting and<br/>14 not in the pipe?</p> <p>15 A. No.</p> <p>16 Q. Okay.</p> <p>17 A. The split was in the pipe.</p> <p>18 Q. Okay.</p> <p>19 A. Yeah, the PEX tubing.</p> <p>20 THE COURT REPORTER: What?<br/>21 THE WITNESS: The split was in the PEX<br/>22 tubing.</p> <p>23 THE COURT REPORTER: The PEX tubing?<br/>24 THE WITNESS: Yes.<br/>25 THE COURT REPORTER: Thank you.</p>                     | <p style="text-align: right;">Page 32</p> <p>1 A. Yes, that is still there.</p> <p>2 Q. And it's still installed?</p> <p>3 A. Still installed.</p> <p>4 Q. Okay. Have you had any subsequent leaks<br/>5 there?</p> <p>6 A. Not at that particular section of the<br/>7 pipe.</p> <p>8 Q. Okay. And you said this was in the<br/>9 crawlspace?</p> <p>10 A. Yes.</p> <p>11 Q. Close to the water heater, right?</p> <p>12 A. Uh-huh.</p> <p>13 Q. And that is a yes?<br/>14 How far from the water heater, do you<br/>15 think?</p> <p>16 A. It was not far at all. I would say, I<br/>17 mean, in a straight line, 18 inches, 2 feet.</p> <p>18 Q. Okay. How did you notice it was leaking?</p> <p>19 A. Just a fine mist coming out of it. It was<br/>20 so fine you had to look right at it to see it. And<br/>21 you can hear it; you know, you could hear a little<br/>22 hiss.</p> <p>23 Q. Did you just happen to be near it and spot<br/>24 it, or had you noticed issues with the plumbing?</p> <p>25 A. Well, I was near it and spotted it, but</p>                                                                           |
| <p style="text-align: right;">Page 31</p> <p>1 Q. (By Mr. Weslander) And describe the PEX<br/>2 tubing. This was a return hot water line, so this<br/>3 would have been a red pipe, correct?</p> <p>4 A. Uh-huh. Yes.</p> <p>5 Q. Okay. And do you know specifically that<br/>6 this was a NIBCO pipe?</p> <p>7 A. Yes, I do.</p> <p>8 Q. And how do you know that?</p> <p>9 A. The print on the pipe.</p> <p>10 Q. Okay. Do you know what Mr. Ewing did to<br/>11 repair it?</p> <p>12 A. Uh-huh. Yes. He used that fitting I just<br/>13 mentioned.</p> <p>14 Q. Okay.</p> <p>15 A. So he just cut the bad section out and put<br/>16 this fitting in and it was fixed.</p> <p>17 Q. Okay. And who selected the material, the<br/>18 shark bite fitting, for this repair?</p> <p>19 A. Bill Ewing did.</p> <p>20 Q. What happened to the repaired pipe, the<br/>21 section that he took out?</p> <p>22 A. It got thrown away.</p> <p>23 Q. Okay. And what about the remaining piece<br/>24 of the pipe, the repaired portion, if you will, is<br/>25 that still in your home?</p> | <p style="text-align: right;">Page 33</p> <p>1 also there was water on the floor.</p> <p>2 Q. Okay. And did you do anything to document<br/>3 the leak, take a photo of it or anything like that?</p> <p>4 A. No.</p> <p>5 Q. Okay. You mentioned spraying onto the<br/>6 ground. Other than this repair to the pipe, did this<br/>7 water coming from the pipe, did it damage your home<br/>8 at all?</p> <p>9 A. That leak? No.</p> <p>10 Q. And any personal property, I mean anything<br/>11 you had down in the crawlspace that got damaged<br/>12 because of it?</p> <p>13 A. Nothing that got damaged. I caught it<br/>14 early on, though.</p> <p>15 Q. How do you know that?</p> <p>16 A. How -- I'm sorry. How do I know what?</p> <p>17 Q. That you caught it early.</p> <p>18 A. Because the puddle of water was so small<br/>19 it couldn't have been leaking for long.</p> <p>20 Q. And I think -- we'll look at this invoice<br/>21 in a bit, but I think you said it was somewhere<br/>22 around \$150 or so to repair it?</p> <p>23 A. Yes.</p> <p>24 Q. And did you pay for that out of pocket?</p> <p>25 A. Yes.</p> |

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| <p style="text-align: right;">Page 34</p> <p>1 Q. And did you do anything else regarding</p> <p>2 this leak once you had it fixed by Bill Ewing?</p> <p>3 A. For that particular leak? No.</p> <p>4 Q. Okay. So you didn't make a warranty claim</p> <p>5 or anything like that?</p> <p>6 A. No.</p> <p>7 Q. All right. Do you remember the next leak?</p> <p>8 A. Uh-huh.</p> <p>9 Q. And is that a yes?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Please tell me approximately when</p> <p>12 that would have happened.</p> <p>13 A. It was within -- let's see here. It was</p> <p>14 within less than six months after the first leak,</p> <p>15 which is pretty typical of all the successive leaks</p> <p>16 after that.</p> <p>17 And it was similar in nature, the same</p> <p>18 sort of split but just further down the line, as the</p> <p>19 water travels, a few feet. And this point, we're</p> <p>20 still under the crawlspace.</p> <p>21 Q. Okay. So this is -- in relation to the</p> <p>22 first leak, it's farther away from the water heater?</p> <p>23 A. Uh-huh. Yes. Yes.</p> <p>24 Q. And approximately how much farther?</p> <p>25 A. From the first leak, I would say 4, maybe</p> | <p style="text-align: right;">Page 36</p> <p>1 Q. Could you see a split in the pipe or could</p> <p>2 you only see the mist?</p> <p>3 A. You could only see the mist.</p> <p>4 Q. Okay. And was that the case for the first</p> <p>5 one as well? I mean, when you looked at it -- when I</p> <p>6 say "the first one," I mean the first leak.</p> <p>7 When you looked at the pipe in that first</p> <p>8 leak, could you see a split in the pipe or could you</p> <p>9 only see a mist?</p> <p>10 A. You could only see the mist.</p> <p>11 Q. And so what did you do, then, in response</p> <p>12 to the second leak you observed?</p> <p>13 A. That one, I called Dupree to fix that one.</p> <p>14 Q. Do you remember what you said when you</p> <p>15 called him?</p> <p>16 A. I just reported that some of the PEX</p> <p>17 tubing they had installed was leaking and they said,</p> <p>18 We'll get out and fix it.</p> <p>19 Q. And how long did it take them to do that?</p> <p>20 A. That probably didn't take but maybe an</p> <p>21 hour.</p> <p>22 Q. Sorry. Let me clarify. From the time you</p> <p>23 called them until when they arrived at your home.</p> <p>24 A. Oh. How long did it take to get to the</p> <p>25 job? Within two or three days.</p> |
| <p style="text-align: right;">Page 35</p> <p>1 5 feet.</p> <p>2 Q. Okay. And is this in a section of pipe</p> <p>3 that is going along horizontally, parallel to the</p> <p>4 ground?</p> <p>5 A. Yes.</p> <p>6 Q. And how did you first notice this leak?</p> <p>7 A. This one, I could hear.</p> <p>8 Q. And where were you when you heard it?</p> <p>9 A. Standing in the -- on the slab in the</p> <p>10 basement there.</p> <p>11 Q. Do you recall why you went into the</p> <p>12 crawlspace on this occasion?</p> <p>13 A. I store, you know, yard maintenance stuff</p> <p>14 down there.</p> <p>15 Q. And so I take it the color and size of the</p> <p>16 pipe you saw leaking was the same as it was for the</p> <p>17 first one, correct?</p> <p>18 A. Yes.</p> <p>19 Q. So what did you do when you saw -- well,</p> <p>20 let me ask this: Describe, if you could, what you</p> <p>21 saw when you looked at the pipe.</p> <p>22 A. You had to look at it with a flashlight</p> <p>23 because it's dark under there, but once you got the</p> <p>24 light on, you could see a mist of spray coming out of</p> <p>25 the PEX tubing.</p>                                                    | <p style="text-align: right;">Page 37</p> <p>1 Q. And did you do anything in the meantime to</p> <p>2 try to stop the leak or prevent it from damaging</p> <p>3 anything?</p> <p>4 A. No.</p> <p>5 Q. Okay. So when they came to repair, did</p> <p>6 you observe what they did?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Do you recall who came from Dupree</p> <p>9 Plumbing on this visit?</p> <p>10 A. No.</p> <p>11 Q. Do you remember if it was one person, two</p> <p>12 people?</p> <p>13 A. This -- that trip, I recall it being one</p> <p>14 person.</p> <p>15 Q. Okay. And do you know what they did?</p> <p>16 A. They put a new section of pipe in.</p> <p>17 Q. How long of a section?</p> <p>18 A. I can't recall.</p> <p>19 Q. Did they tell you anything about what they</p> <p>20 had found when they looked at the pipe?</p> <p>21 A. Yes. They said there was a split in the</p> <p>22 line.</p> <p>23 Q. And did they tell you that while they were</p> <p>24 there at the scene of your home?</p> <p>25 A. Yes.</p>                                                                                                                                                                                                                                       |

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| <p style="text-align: right;">Page 38</p> <p>1 Q. Okay. Do you know what materials they</p> <p>2 used to do the repair?</p> <p>3 A. What pipe they used?</p> <p>4 Q. Well, let's start with the pipe, yeah. Do</p> <p>5 you know what pipe they used to do this repair?</p> <p>6 A. I don't know the brand.</p> <p>7 Q. Okay.</p> <p>8 A. I know it was PEX tubing but probably some</p> <p>9 other brand.</p> <p>10 Q. Okay. And describe what this PEX tubing</p> <p>11 used to do this repair looked like.</p> <p>12 A. It looked the same as the old, but they</p> <p>13 had told me -- I think by this time we were starting</p> <p>14 to have some discussion about NIBCO PEX tubing and I</p> <p>15 think they were using another brand of PEX tubing by</p> <p>16 that time.</p> <p>17 Q. You said you had started to have some</p> <p>18 discussions. What were those discussions?</p> <p>19 A. I just asked them if they had had any</p> <p>20 other troubles with any other PEX tubing they had</p> <p>21 installed, and he said he could recall one house they</p> <p>22 had some troubles in, but he didn't give me any</p> <p>23 details.</p> <p>24 Q. And this was while the Dupree</p> <p>25 representative was at your home?</p> | <p style="text-align: right;">Page 40</p> <p>1 Q. And do you know why that is?</p> <p>2 A. It was -- they warranty their work,</p> <p>3 including the materials used.</p> <p>4 Q. This second leak, did it cause any damage</p> <p>5 to your home, in terms of water damage?</p> <p>6 A. It wet the floor joists just above it, but</p> <p>7 other than putting water in the crawlspace, as you</p> <p>8 can imagine -- which dries out eventually, but it</p> <p>9 still puts moistures in your basement and that's not</p> <p>10 good -- no specific damage.</p> <p>11 Q. How big of an area of moisture did you see</p> <p>12 on the -- in the floor of the crawlspace because of</p> <p>13 this leak?</p> <p>14 A. Probably 2 or 3 square feet.</p> <p>15 Q. Okay. And so you did not do anything,</p> <p>16 though, to replace the joists or anything like that?</p> <p>17 A. No.</p> <p>18 Q. Okay. And any personal property, personal</p> <p>19 belongings, that you keep in the crawlspace damaged</p> <p>20 because of this second leak?</p> <p>21 A. No.</p> <p>22 Q. Okay. All right. Well, let's see.</p> <p>23 Moving on, do you remember, then, the next leak after</p> <p>24 that?</p> <p>25 A. Yeah. The next several leaks were all</p>                                                  |
| <p style="text-align: right;">Page 39</p> <p>1 A. Yes. He was the plumber doing the work.</p> <p>2 Q. Okay. So on this second repair, while the</p> <p>3 plumber was at your home you brought up the subject</p> <p>4 of NIBCO?</p> <p>5 A. Correct.</p> <p>6 Q. And do you -- he said that he had -- he</p> <p>7 could recall one other instance or one other home</p> <p>8 where he had had an issue with NIBCO but that was it?</p> <p>9 A. Yes. He didn't -- he wasn't real clear on</p> <p>10 that, so...</p> <p>11 Q. Okay. And in terms of the materials used</p> <p>12 to do this repair, do you know who selected those</p> <p>13 materials?</p> <p>14 A. I would assume -- I don't know this, but I</p> <p>15 would assume it would be Dupree Plumbing.</p> <p>16 Q. Do you know what happened to the portion</p> <p>17 of pipe that was removed in this second repair?</p> <p>18 A. No.</p> <p>19 Q. So you did not retain that pipe or ask the</p> <p>20 plumber --</p> <p>21 A. I did not. Correct. I did not.</p> <p>22 Q. And do you remember what you were charged,</p> <p>23 approximately, for that repair work, the second</p> <p>24 repair?</p> <p>25 A. They didn't charge me for the repairs.</p>                           | <p style="text-align: right;">Page 41</p> <p>1 similar in nature and very similar in what we had to</p> <p>2 do to fix them, but now the leaks were getting up</p> <p>3 into the walls. And so, again, it leaked for some</p> <p>4 time, I don't know how long, before I realized that</p> <p>5 we have a problem, because I don't go down in the</p> <p>6 basement all that often.</p> <p>7 So yeah, the next leak is up in the wall,</p> <p>8 in the bathroom.</p> <p>9 Q. Okay. So yeah, let's take them one at a</p> <p>10 time, if we can. And I probably just need to go</p> <p>11 through in somewhat of a tedious fashion and separate</p> <p>12 them out and ask you the questions about each of</p> <p>13 them.</p> <p>14 So to the best of your recollection, then,</p> <p>15 following this second leak that we just described, do</p> <p>16 you have any recollection of when the third leak</p> <p>17 would have been?</p> <p>18 A. What I can tell you is that almost all</p> <p>19 these leaks were within three to six months of one</p> <p>20 another.</p> <p>21 Q. So to the best of your recollection, it</p> <p>22 would be three to six months after the second leak?</p> <p>23 A. Correct. Yes.</p> <p>24 Q. And again, we can look at the documents in</p> <p>25 a bit, but...</p> |

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| <p style="text-align: right;">Page 42</p> <p>1           Where was, then, the third leak in the</p> <p>2 home?</p> <p>3       A.    It was inside the wall but very close to</p> <p>4 the floor.</p> <p>5       Q.    And inside what wall?</p> <p>6       A.    We have two baths right next to each</p> <p>7 other. You know, one is the kids' bath; the other</p> <p>8 one is the master bath. And there's just a wall in</p> <p>9 between them. That wall.</p> <p>10      Q.    Okay. And how did you find this leak?</p> <p>11      A.    This one, I could hear. I could hear it</p> <p>12 in the wall. And so I went down in the basement and</p> <p>13 confirmed there was some water dripping through the</p> <p>14 floor, and so that's how I knew we had that leak.</p> <p>15      Q.    Where is this wall overall in your home</p> <p>16 compared with, for example, in relation to the water</p> <p>17 heater or the other leaks that we've been talking</p> <p>18 about? Give us a sense of where it's situated in the</p> <p>19 home.</p> <p>20      A.    From the water heater, it's about 7 to 8</p> <p>21 feet towards the back of the house, running</p> <p>22 perpendicular to the left-hand wall of the house.</p> <p>23      Q.    And when you went down into the crawlspace</p> <p>24 and saw this drip, could you actually see a pipe</p> <p>25 leaking or did you only see the dripping?</p> | <p style="text-align: right;">Page 44</p> <p>1 you mean?</p> <p>2       A.    It was almost a stream of water coming</p> <p>3 down into the crawlspace.</p> <p>4       Q.    So you had your -- did you shut off the</p> <p>5 water only going to the bathrooms or the entire --</p> <p>6 the water for the entire home?</p> <p>7       A.    I cut off the water for the entire home.</p> <p>8       Q.    And so you were without running water for</p> <p>9 a couple days?</p> <p>10      A.    Well, I would go turn it on when we had to</p> <p>11 take showers and then go turn it back off when we</p> <p>12 were done.</p> <p>13      Q.    Where is the main water shutoff for your</p> <p>14 home?</p> <p>15      A.    The main water shutoff is just within</p> <p>16 inches of where the water main comes from the street</p> <p>17 into the crawlspace on the southeast corner of the</p> <p>18 house.</p> <p>19      Q.    So when Dupree came to the home to repair</p> <p>20 this third leak, what did they do?</p> <p>21      A.    They had to tear down some tile in the</p> <p>22 bathroom and expose the plumbing in the wall, and</p> <p>23 then they did find a leaking section and replaced a</p> <p>24 small section.</p> <p>25      Q.    Did you observe them doing this work?</p>                                                                 |
| <p style="text-align: right;">Page 43</p> <p>1       A.    You just see the dripping.</p> <p>2       Q.    And is the bath on the -- what story of</p> <p>3 the home is this bath on?</p> <p>4       A.    Main level, so just above the crawlspace.</p> <p>5       Q.    So it would have been dripping not all the</p> <p>6 way from above, down to the crawlspace; but from the</p> <p>7 main floor, down below?</p> <p>8       A.    Uh-huh. Correct. Yes.</p> <p>9       Q.    And so I guess -- I'm guessing that since</p> <p>10 you couldn't see the leak at that time when you saw</p> <p>11 the drip, you could not see the color and size of the</p> <p>12 pipe it was coming from?</p> <p>13      A.    Yes, that is correct.</p> <p>14      Q.    Okay. So on this particular repair, then,</p> <p>15 what did you do when you discovered the drip?</p> <p>16      A.    I called Dupree Plumbing.</p> <p>17      Q.    And do you remember how long it took them</p> <p>18 to get there?</p> <p>19      A.    Not long. They were out there within a</p> <p>20 couple of days.</p> <p>21      Q.    Okay. Did you do anything in the meantime</p> <p>22 to stop the leak?</p> <p>23      A.    I did. I turned off the -- I turned off</p> <p>24 the water because it was a bad leak.</p> <p>25      Q.    When you say "it was a bad leak," what do</p>                                                   | <p style="text-align: right;">Page 45</p> <p>1       A.    On and off.</p> <p>2       Q.    Okay. Did you see -- at the time that</p> <p>3 they had opened up the wall to expose the plumbing,</p> <p>4 did you see the pipe in the wall?</p> <p>5       A.    Uh-huh. I did, yes.</p> <p>6       Q.    And you saw it before they removed it or</p> <p>7 repaired it?</p> <p>8       A.    Yes.</p> <p>9       Q.    What did you see?</p> <p>10      A.    I saw a section of pipe very similar to</p> <p>11 what we'd seen before with the split.</p> <p>12      Q.    How could you tell there was a split?</p> <p>13      A.    It creates a little white, you know --</p> <p>14 kind of like when you bend your fingernail backwards,</p> <p>15 you get a white line on your fingernail; it's kind of</p> <p>16 like that. It's like an inconsistency.</p> <p>17            So you have -- I can't remember if it was</p> <p>18 red or if it was blue, but it's easy to spot once you</p> <p>19 know what you're looking for. It's like a stress</p> <p>20 fracture.</p> <p>21      Q.    So it was not just a mist this third time?</p> <p>22      A.    Let's see. It was -- I would say it was a</p> <p>23 combination of a stream and some mist, so it was</p> <p>24 really putting out some water.</p> <p>25      Q.    Which way was the water going? When you</p> |



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| <p style="text-align: right;">Page 46</p> <p>1 looked at the pipe, how was the stream spraying from<br/>2 this one?</p> <p>3 A. It was spraying towards the tile wall.</p> <p>4 Q. And you said you weren't sure if it was<br/>5 red or blue pipe that had the leak on this one?</p> <p>6 A. That is correct.</p> <p>7 Q. And do you know to this day whether this<br/>8 third leak was in a blue or a red line?</p> <p>9 A. I think, the best I can recall, that it<br/>10 was blue, because I kept that section.</p> <p>11 Q. Okay. And would that have been the cold<br/>12 water line, then?</p> <p>13 A. You know, by the time some of the plumbing<br/>14 got up into the walls of the house, they were<br/>15 alternating blue and red.</p> <p>16 Q. Okay.</p> <p>17 A. So because it was blue doesn't mean it was<br/>18 a cold water line.</p> <p>19 Q. Okay. Do you know if this one was a hot<br/>20 or a cold?</p> <p>21 A. I think, to the best that I can recall, it<br/>22 was hot.</p> <p>23 Q. And so what did they do to repair this?<br/>24 What did Dupree do to repair this situation?</p> <p>25 A. So they took, I would say, maybe a 6-inch</p> | <p style="text-align: right;">Page 48</p> <p>1 thinking.</p> <p>2 Q. What about the charge to you for this<br/>3 particular repair; was there any charge from Dupree?</p> <p>4 A. There was none.</p> <p>5 Q. Did you pay any out-of-pocket amount in<br/>6 relation to this third repair?</p> <p>7 A. No.</p> <p>8 Q. What about -- did this third leak cause<br/>9 any damage to your home?</p> <p>10 A. It wet all the, you know, the studs on<br/>11 either side of the leak; wet the framing below and<br/>12 the floor and the floor joists underneath in the<br/>13 crawlspace.</p> <p>14 Q. Did you -- oh. Go ahead.</p> <p>15 A. We didn't replace any of that. We just<br/>16 did our best to dry it out.</p> <p>17 Q. Okay. And any personal property, personal<br/>18 belongings, damaged because of this?</p> <p>19 A. No.</p> <p>20 Q. Okay. Let's see. Okay. Let's talk about<br/>21 the next one then. So this third leak, we are at<br/>22 approximately a three- to six-month period after the<br/>23 second leak?</p> <p>24 A. Uh-huh.</p> <p>25 Q. Do you recall how much longer after the</p>                                                                         |
| <p style="text-align: right;">Page 47</p> <p>1 section out, replaced it with a new section of<br/>2 non-NIBCO PEX tubing.</p> <p>3 Q. And when you say "non-NIBCO," do you know<br/>4 what it was?</p> <p>5 A. I do not.</p> <p>6 Q. Do you know who selected those materials<br/>7 for this repair?</p> <p>8 A. I'm only assuming that Dupree would have<br/>9 selected that.</p> <p>10 Q. Did you tell them anything -- did you give<br/>11 them any directions regarding the type of material<br/>12 they were to use in the repair?</p> <p>13 A. Well, by that time I was onto what was<br/>14 going on. I did say, Don't use NIBCO, whatever you<br/>15 do.</p> <p>16 Q. And then what was their response?</p> <p>17 A. They said, Understood.</p> <p>18 Q. And you said you kept this repaired pipe?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And what happened to that pipe?</p> <p>21 A. I held onto it and Mr. Nash and his law<br/>22 firm requested that I send it to them, and so that's<br/>23 what I did.</p> <p>24 Q. And do you remember about when that was?</p> <p>25 A. It's been about a year and a half ago, I'm</p>                                  | <p style="text-align: right;">Page 49</p> <p>1 repair of this third leak until you had another leak?</p> <p>2 A. That one, I'm a little more clear on. It<br/>3 was about four months after.</p> <p>4 Q. If you had to give a date range of this<br/>5 one, what would it be?</p> <p>6 A. Oh, I've got to do the math from the first<br/>7 one. It's real foggy. I'm unsure.</p> <p>8 Q. But about four months after the third<br/>9 repair, to the best of your recollection?</p> <p>10 A. Yes.</p> <p>11 Q. And where was this leak in your home?</p> <p>12 A. This leak was in the same area, same<br/>13 bathroom, same run of pipe, if you will, but just a<br/>14 little further down the line, you know, as these<br/>15 leaks tend to do.</p> <p>16 Q. A little further -- when you say "a little<br/>17 further down the line," what do you mean?</p> <p>18 A. I'd say it was a foot away from the other<br/>19 one.</p> <p>20 Q. Okay. And farther -- closer to the<br/>21 crawlspace or farther away?</p> <p>22 A. Further away, right.</p> <p>23 Q. All right. And, I'm sorry, you said<br/>24 approximately what distance from the third leak?</p> <p>25 A. About a foot.</p> |

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| <p style="text-align: right;">Page 50</p> <p>1 Q. About a foot?</p> <p>2 A. Uh-huh.</p> <p>3 Q. Okay. And was it in the same blue section</p> <p>4 of pipe?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. I haven't asked this, but for the</p> <p>7 first, second, and third repairs and for this one,</p> <p>8 are we all talking about -- are we talking about the</p> <p>9 same size of pipe for each of these leaks?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And what size is that?</p> <p>12 A. I believe it is a three-quarter.</p> <p>13 Q. Okay. Three-quarter inch?</p> <p>14 A. Yes.</p> <p>15 Q. So how did you discover this fourth leak?</p> <p>16 A. In the same way. I could hear the sound</p> <p>17 of water leaking in the walls.</p> <p>18 Q. And what did it sound like?</p> <p>19 A. Well, you could hear a combination of a</p> <p>20 hissing sound inside the wall and you could hear</p> <p>21 dripping in the crawlspace.</p> <p>22 Q. And so what did you do when you discovered</p> <p>23 this fourth leak?</p> <p>24 A. Same as before. I called Dupree Plumbing.</p> <p>25 And it's really a carbon copy of the one before it.</p>                                              | <p style="text-align: right;">Page 52</p> <p>1 Q. Okay. Was he a different person who had</p> <p>2 come for the second leak or was it the same all three</p> <p>3 of these leaks?</p> <p>4 A. Leaks two, three and four are the same</p> <p>5 guy, the same repairman.</p> <p>6 Q. Okay. Obviously, the first one was Bill</p> <p>7 Ewing?</p> <p>8 A. Right. Correct.</p> <p>9 Q. And again, did you have any input in terms</p> <p>10 of what they used to -- the material used to do this</p> <p>11 fourth repair?</p> <p>12 A. Same as before. I said, Just make sure to</p> <p>13 use, you know, a PEX tubing that is not made by</p> <p>14 NIBCO.</p> <p>15 Q. And did you inspect the work that they did</p> <p>16 before they put it back into the wall or tiled it</p> <p>17 over again?</p> <p>18 A. Yes.</p> <p>19 Q. And what did you see?</p> <p>20 A. I saw a freshly repaired section with two</p> <p>21 new coupling fittings on each end.</p> <p>22 Q. Different colored pipe?</p> <p>23 A. Same color. They used the same color.</p> <p>24 Q. Okay. Did this leak damage your home at</p> <p>25 all?</p> |
| <p style="text-align: right;">Page 51</p> <p>1 Q. And when you say "it's a carbon copy,"</p> <p>2 what do you mean?</p> <p>3 A. They followed the same steps. We had to</p> <p>4 tear out the same tiles in the bathroom. They fixed</p> <p>5 that section of pipe in a similar way, using</p> <p>6 non-NIBCO tubing, and patched it all back up.</p> <p>7 Q. Okay. And did you also observe this pipe</p> <p>8 in the wall, the section of leaking pipe in the wall,</p> <p>9 before it was removed?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. What did you see that time?</p> <p>12 A. The same thing as before. You see a</p> <p>13 little split in the pipe, about an inch long, I would</p> <p>14 say, and I saw them cut it out. No, we did not keep</p> <p>15 that one.</p> <p>16 Q. Okay. And why is that?</p> <p>17 A. Because I already had a sample.</p> <p>18 Q. Okay. Do you remember if it was the same</p> <p>19 person that had done the previous leak that came to</p> <p>20 your home?</p> <p>21 A. Yes.</p> <p>22 Q. And do you remember who that was?</p> <p>23 A. I don't remember his name.</p> <p>24 Q. Can you describe him?</p> <p>25 A. He was a Mexican fellow. Yeah.</p> | <p style="text-align: right;">Page 53</p> <p>1 A. No. It just wet the framing, which always</p> <p>2 concerns me. You know, you worry about mold and</p> <p>3 things like that. But no property damage. Didn't</p> <p>4 harm anything in the basement other than wetting the</p> <p>5 framing.</p> <p>6 Q. Okay. And again, any personal property,</p> <p>7 personal belongings, that were damaged because of</p> <p>8 this?</p> <p>9 A. No.</p> <p>10 Q. Okay. And did you pay anything out of</p> <p>11 pocket for this repair?</p> <p>12 A. No.</p> <p>13 Q. And is that for the same reason as for the</p> <p>14 third?</p> <p>15 A. Yes.</p> <p>16 Q. How long were they at your home for</p> <p>17 repairing this fourth leak? When I say "they," I</p> <p>18 mean Dupree.</p> <p>19 A. Dupree was there, I would say, a good four</p> <p>20 or five hours.</p> <p>21 Q. And how does that compare with the third</p> <p>22 leak?</p> <p>23 A. About the same. About the same.</p> <p>24 Q. All right. Okay. Bear with me here, and</p> <p>25 if we could, let's talk through the remaining two</p>                  |



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| <p style="text-align: right;">Page 54</p> <p>1 that you've alleged.</p> <p>2 What was the next leak after this fourth</p> <p>3 leak?</p> <p>4 A. The next leak after that one, again, was</p> <p>5 further away from the water heater, in the same pipe,</p> <p>6 just another about a foot, maybe a foot and a half</p> <p>7 away.</p> <p>8 Q. And was it in the same area of the home?</p> <p>9 A. Yes, same bathroom, same wall cavity, same</p> <p>10 run of pipe.</p> <p>11 Q. Okay. And how did you notice -- well,</p> <p>12 when was this?</p> <p>13 A. This was about three to four months after</p> <p>14 -- what was the last leak? Was that the third or the</p> <p>15 fourth?</p> <p>16 Q. The last one we talked about was the</p> <p>17 fourth.</p> <p>18 A. Okay. So it was about three to four</p> <p>19 months after that one.</p> <p>20 Q. Okay. And how did you discover this leak?</p> <p>21 A. In a similar way. I could hear the water</p> <p>22 leaking in the wall. You could hear it hitting the</p> <p>23 wall. It had some force behind it.</p> <p>24 Q. And could you hear this as you were</p> <p>25 standing in the bathroom?</p>                        | <p style="text-align: right;">Page 56</p> <p>1 know. So they kind of were trying to anticipate</p> <p>2 where the leak is by that point.</p> <p>3 Q. Okay. And is this a wall that's entirely</p> <p>4 tiled --</p> <p>5 A. Yes.</p> <p>6 Q. -- from floor to ceiling?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. So the first two, how high on the</p> <p>9 wall did they have to go in removing the tile?</p> <p>10 A. The first one was probably 6 inches off</p> <p>11 the ground, and then the next one was probably a foot</p> <p>12 to a foot and a half off the ground.</p> <p>13 Q. So for this one, how high up the wall are</p> <p>14 we now in terms of having to remove the tile?</p> <p>15 A. At this point, we're probably 6 feet off</p> <p>16 the ground.</p> <p>17 Q. And so Dupree removed the tile. Did you</p> <p>18 actually, then, observe the pipe in the wall before</p> <p>19 they made their repair?</p> <p>20 A. This time I did not.</p> <p>21 Q. Okay. And why is that?</p> <p>22 A. Because I had had my fill of watching</p> <p>23 plumbing happen in my house.</p> <p>24 Q. Okay. And so in terms of what they found</p> <p>25 and what they saw in there, you have to rely on what</p>                                                                       |
| <p style="text-align: right;">Page 55</p> <p>1 A. You could hear it in the next room over.</p> <p>2 Q. Which is?</p> <p>3 A. The master bedroom.</p> <p>4 Q. Okay. And so this one -- and could you</p> <p>5 also hear the previous leaks, the third and fourth</p> <p>6 leaks, from a similar distance, or was it quiet for</p> <p>7 those two?</p> <p>8 A. You could hear it from the same distance.</p> <p>9 Q. Okay. So what did you do when you heard</p> <p>10 this sound?</p> <p>11 A. I called Dupree as soon as I could get</p> <p>12 ahold of a phone and they got out to fix it within</p> <p>13 about two days, same as before.</p> <p>14 Q. Did you observe them doing the work this</p> <p>15 time around?</p> <p>16 A. I did on and off.</p> <p>17 Q. And did you see at the point at which they</p> <p>18 -- well, let me ask you this: Did they have to</p> <p>19 remove tile again as well?</p> <p>20 A. Yes.</p> <p>21 Q. So was it the same tile removed three</p> <p>22 times?</p> <p>23 A. Yes, but we're moving up the wall at this</p> <p>24 point. So it's the same -- we're moving -- because</p> <p>25 we don't know where it is, they removed more, you</p> | <p style="text-align: right;">Page 57</p> <p>1 Dupree tells you about that, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. What did they tell you after this</p> <p>4 repair?</p> <p>5 A. They -- once they got the wall opened up</p> <p>6 and found the leak, then at that point I went to take</p> <p>7 a look, and it's the same as it has been, just a</p> <p>8 little split in a small area, just like all the</p> <p>9 others.</p> <p>10 Q. And so you did see the leak in the wall</p> <p>11 before it was repaired on this instance?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And describe what you saw in terms</p> <p>14 of water coming out of the pipe.</p> <p>15 A. Well, we had shut -- we'd -- what we do --</p> <p>16 the way they do it is they shut off the water once</p> <p>17 they are getting into the wall. And then once</p> <p>18 they've got into it, we go turn the water back on to</p> <p>19 locate it. Once we see it, we go turn the water back</p> <p>20 off so, you know, we don't wet any more than we have</p> <p>21 to. And again, the same type of leak, same split and</p> <p>22 white area on the pipe.</p> <p>23 Q. Any idea of the size of the leak -- the</p> <p>24 split, rather?</p> <p>25 A. It was about half- to three-quarters of an</p> |

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| <p style="text-align: right;">Page 58</p> <p>1 inch.</p> <p>2 Q. Is that larger or smaller than the</p> <p>3 previous?</p> <p>4 A. I would say a little bit smaller.</p> <p>5 Q. And when you say you see a split, you</p> <p>6 described earlier seeing something that almost looked</p> <p>7 like a fingernail print or something like that or an</p> <p>8 impression.</p> <p>9 A. Uh-huh.</p> <p>10 Q. Is that what you saw again, or could you</p> <p>11 actually see an actual split in the pipe?</p> <p>12 MR. NASH: Objection.</p> <p>13 THE WITNESS: What you see is, when the</p> <p>14 pressure is on the pipe, when the water is</p> <p>15 turned on, you can visually see the water coming</p> <p>16 out of the pipe, and these splits are always</p> <p>17 lengthwise. When the water goes off, the pipe</p> <p>18 comes back together and you can't really see a</p> <p>19 -- you don't see an opening but you just see a</p> <p>20 white stress mark.</p> <p>21 Q. (By Mr. Weslander) What did Dupree do to</p> <p>22 repair this particular leak?</p> <p>23 A. They cut out a reasonable section and</p> <p>24 spliced in a new section with non-NIBCO plumbing,</p> <p>25 with couplings, the appropriate couplings.</p> | <p style="text-align: right;">Page 60</p> <p>1 individual instances.</p> <p>2 Let's talk about this sixth leak. Do you</p> <p>3 recall, then, after the one we just talked about, how</p> <p>4 much more time went by until you had another leak?</p> <p>5 A. I think a little more time went by than</p> <p>6 before. At this point we're probably close to a</p> <p>7 year, is what I remember.</p> <p>8 Q. Okay. So it had been a year since the</p> <p>9 fifth leak until you had another one, approximately?</p> <p>10 A. Approximately.</p> <p>11 Q. Okay. Well, any idea where we are now in</p> <p>12 terms of the year and month on this sixth leak?</p> <p>13 A. Let me recall. It was about early spring</p> <p>14 of '16, I would say, or maybe in late winter, March.</p> <p>15 March '16 --</p> <p>16 Q. Okay.</p> <p>17 A. -- roughly. Dupree will probably have</p> <p>18 more accurate records on that.</p> <p>19 Q. Okay. After this lawsuit had been filed,</p> <p>20 though, certainly?</p> <p>21 A. Yes.</p> <p>22 Q. What did you see this time, in the sixth</p> <p>23 leak? Or what caused you to realize there was a</p> <p>24 leak? Let me ask it that way.</p> <p>25 A. Okay. This time there was a slow drip</p> |
| <p style="text-align: right;">Page 59</p> <p>1 Q. Did you give them any input on materials</p> <p>2 on this fifth leak?</p> <p>3 A. Other than to not use NIBCO, that was all.</p> <p>4 Q. And in this case, what happened to the</p> <p>5 pipe that was taken out of the wall?</p> <p>6 A. I believe it just got thrown away.</p> <p>7 Q. In any of the instances that we've talked</p> <p>8 to up until now, did you take a photo of the pipe as</p> <p>9 it either appeared in the wall or after it was cut</p> <p>10 out?</p> <p>11 A. No.</p> <p>12 Q. And why not?</p> <p>13 A. I had my section that had a split in it,</p> <p>14 and I believed that to be enough.</p> <p>15 Q. Did Dupree charge you for this fifth</p> <p>16 repair work?</p> <p>17 A. They did not.</p> <p>18 Q. And did this leak damage your home at all</p> <p>19 beyond wetting the joists or framing?</p> <p>20 A. No.</p> <p>21 Q. And again, any personal property damaged,</p> <p>22 any personal belongings damaged, because of this?</p> <p>23 A. No.</p> <p>24 Q. Okay. All right. We are on the home</p> <p>25 stretch here in terms of talking about these</p>                                                                                    | <p style="text-align: right;">Page 61</p> <p>1 into the basement. That's the only sign that I had.</p> <p>2 A slow drip into the crawlspace, I should say.</p> <p>3 Q. And how did you notice that?</p> <p>4 A. Visually, going into the basement one day.</p> <p>5 Q. And where was this drip coming from in</p> <p>6 relation to some of the other features you've talked</p> <p>7 about?</p> <p>8 A. A little further up the pipe, closer to</p> <p>9 the ceiling now.</p> <p>10 Q. What section or area of your home was this</p> <p>11 underneath?</p> <p>12 A. What section is it underneath?</p> <p>13 Q. Well, yeah. This area of the crawlspace,</p> <p>14 help me understand where this leak was occurring in</p> <p>15 terms of the layout of your home.</p> <p>16 A. It was in the same -- in the same wall</p> <p>17 cavity as the prior leaks, in the kids' bathroom on</p> <p>18 the master level.</p> <p>19 Q. Okay. So you saw a drip coming from the</p> <p>20 same area that you had seen the other bathroom leaks</p> <p>21 dripping into?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And so what did you do this time?</p> <p>24 A. Again I called Dupree Plumbing to let them</p> <p>25 know.</p>                            |

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| <p style="text-align: right;">Page 62</p> <p>1 Q. And do you remember how long it took them<br/>2 to come and fix it?</p> <p>3 A. Well, it took them longer, because by this<br/>4 time we had decided to take out all of the NIBCO<br/>5 tubing we could get to inside the home and replace<br/>6 it.</p> <p>7 Q. Okay. When did you make that decision?</p> <p>8 A. Over the phone, on that first phone call<br/>9 about that particular leak.</p> <p>10 Q. Okay. So if I understand this correctly,<br/>11 you called Dupree to report that there was another<br/>12 leak?</p> <p>13 A. Uh-huh.</p> <p>14 Q. And during the discussion, the subject of<br/>15 replumbing the home came up?</p> <p>16 A. Yes.</p> <p>17 Q. And who suggested or who first mentioned<br/>18 that, you or the Dupree representative?</p> <p>19 A. I did.</p> <p>20 Q. Okay. What did you say?</p> <p>21 A. I said, basically, so that this doesn't<br/>22 happen again and so that we don't have to go to any<br/>23 more time and expense, because I felt that it would<br/>24 keep happening, we just wanted to -- I wanted to and<br/>25 they were agreeable to taking out all the PEX tubing</p>                            | <p style="text-align: right;">Page 64</p> <p>1 Q. Okay. Did you give them any particular<br/>2 direction in terms of how to go about the replumbing?</p> <p>3 A. No.</p> <p>4 Q. And you did not specifically tell them on<br/>5 this sixth time, Don't use NIBCO?</p> <p>6 A. Correct. Yes.</p> <p>7 Q. You believe that was implied?</p> <p>8 A. I believe so.</p> <p>9 Q. Okay. Do you know what brand of PEX that<br/>10 they used?</p> <p>11 A. No.</p> <p>12 Q. Can you describe what the new PEX looks<br/>13 like compared with the old PEX?</p> <p>14 A. Very similar. It looks the same. You<br/>15 can't tell the difference.</p> <p>16 Q. Have you done anything to verify what<br/>17 brand it is?</p> <p>18 A. I was looking at the pipe and I cannot<br/>19 recall what brand it is; but it wasn't NIBCO, I know<br/>20 that.</p> <p>21 Q. And what color is the new pipe?</p> <p>22 A. Well, they replaced with like colors, blue<br/>23 with blue, red with red.</p> <p>24 Q. And refresh my memory, the white PEX<br/>25 piping in your home, if I recall correctly, only is</p>                                 |
| <p style="text-align: right;">Page 63</p> <p>1 that had been installed and putting in new.</p> <p>2 Q. Okay. And so they did not come to address<br/>3 this sixth leak until the time when they could do the<br/>4 entire replumbing?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. So what input did you give them in<br/>7 terms of materials for this replumbing project?</p> <p>8 A. Well, I didn't -- I didn't give them any<br/>9 direction because I was sounding like a broken record<br/>10 by that point, saying, Don't use NIBCO. They knew.<br/>11 They did not want to use NIBCO. So we just had an<br/>12 understanding that that would be so.</p> <p>13 Q. Did you use PEX on the replumb?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And what was -- what factored into<br/>16 your decision -- well, let me ask this: Was it your<br/>17 decision to use PEX or Dupree's?</p> <p>18 A. It was Dupree's.</p> <p>19 Q. Okay. And did you consider replumbing<br/>20 with something other than PEX?</p> <p>21 A. I considered copper.</p> <p>22 Q. And why did you not go with copper<br/>23 ultimately?</p> <p>24 A. They still said that altogether PEX was<br/>25 the better choice. Dupree advised me.</p> | <p style="text-align: right;">Page 65</p> <p>1 -- is dedicated to the recirculation system, correct?</p> <p>2 A. Uh-huh. Yes. I'm sorry.</p> <p>3 Q. And did that change at all as part of this<br/>4 replumbing?</p> <p>5 A. No.</p> <p>6 Q. For this sixth leak, was there ever a<br/>7 diagnosis? Even though you went with the replumbing,<br/>8 was there ever a diagnosis of the origin of this<br/>9 sixth leak?</p> <p>10 A. Did we know exactly where it was coming<br/>11 from?</p> <p>12 Q. Correct.</p> <p>13 A. Yes, they found the leaking section.</p> <p>14 Q. Okay. And how do you know that?</p> <p>15 A. They verbally told me.</p> <p>16 Q. Okay. Did you see it?</p> <p>17 A. No, I did not see it.</p> <p>18 Q. Okay. Did you at all -- well, what did<br/>19 they tell you about where it was?</p> <p>20 A. They said -- they described it as being up<br/>21 near the ceiling of the bath.</p> <p>22 Q. And so where would that be in relation to<br/>23 the previous repairs that we've talked about that<br/>24 involved taking out the tile?</p> <p>25 A. So I believe the last one we spoke of was</p> |

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| <p style="text-align: right;">Page 66</p> <p>1 about 6 feet off the ground. This one, being close<br/>2 to the ceiling, was probably between 7-1/2 and 8<br/>3 feet.<br/>4 Q. Did they stop as they were doing -- well,<br/>5 did they find this when they came to do the<br/>6 replumbing?<br/>7 A. Yes.<br/>8 Q. Okay. And when they found the source of<br/>9 this leak, did they call it to your attention?<br/>10 A. Yes.<br/>11 Q. But at that time, you did not go to look<br/>12 at it while it was still in the wall, correct?<br/>13 A. Correct.<br/>14 Q. Okay. How long did it take to do the<br/>15 replumbing?<br/>16 A. Just the plumbing portion only took<br/>17 approximately 2-1/2 days.<br/>18 Q. Any damage to your home based on this<br/>19 sixth leak, other than wetting joists or framing?<br/>20 A. No.<br/>21 Q. And any personal property, personal<br/>22 belongings, damaged because of it?<br/>23 A. No, huh-uh.<br/>24 Q. And what was -- did Dupree charge you for<br/>25 the replumbing?</p>                                              | <p style="text-align: right;">Page 68</p> <p>1 for your deposition today?<br/>2 A. Yes.<br/>3 Q. And you are appearing here in conjunction<br/>4 with this notice, correct?<br/>5 A. Yes.<br/>6 Q. Okay. And I'd ask you to take a look at<br/>7 the names listed at the very top of this first page<br/>8 of this document, starting with Kimberly Cole. Do<br/>9 you see the names listed there in all capital<br/>10 letters?<br/>11 A. Yes.<br/>12 Q. And I'll ask, do you know any of these<br/>13 people besides yourself?<br/>14 A. No.<br/>15 Q. Have you ever met any of them, to the best<br/>16 of your knowledge?<br/>17 A. No, I have not.<br/>18 Q. And have you ever talked with any of them,<br/>19 to the best of your knowledge?<br/>20 A. No.<br/>21 Q. Okay. You can go ahead and set that aside<br/>22 and we'll just keep them in a stack for the court<br/>23 reporter. And feel free, if you need to refer to any<br/>24 of them, to do that at any time.<br/>25 How did you come to be a plaintiff in this</p>                                                                                                       |
| <p style="text-align: right;">Page 67</p> <p>1 A. No.<br/>2 Q. Have you paid any out-of-pocket repair<br/>3 costs to fix these six leaks that we've talked about?<br/>4 A. No.<br/>5 MR. WESLANDER: Let's take a quick break.<br/>6 THE WITNESS: Okay.<br/>7 (Recess from 10:07 a.m. to 10:17 a.m.)<br/>8 Q. (By Mr. Weslander) Okay. Mr. McCoy,<br/>9 after a short break, are you ready to proceed?<br/>10 A. Yes.<br/>11 Q. And do you realize you're still under<br/>12 oath?<br/>13 A. Yes.<br/>14 (Defendant's Exhibit-1 was marked for<br/>15 identification.)<br/>16 Q. (By Mr. Weslander) I'm going to hand you<br/>17 what I'm now marking as Defendant's Exhibit 1. And<br/>18 this is a notice for your deposition today. I would<br/>19 just ask if you'll take a moment and look at this and<br/>20 then let me know if you have seen this document<br/>21 before.<br/>22 A. I have seen this document before.<br/>23 Q. Okay. And do you remember when that was?<br/>24 A. Approximately one week ago.<br/>25 Q. And do you recognize this to be a notice</p> | <p style="text-align: right;">Page 69</p> <p>1 case?<br/>2 A. I first started having all the troubles<br/>3 and then I got online to see if anyone else was<br/>4 having similar troubles, found that it was the case,<br/>5 that people were, and I came across the class action<br/>6 lawsuit on the internet.<br/>7 Q. Okay. When was this, approximately?<br/>8 A. I would say a little over a year and a<br/>9 half ago, two years ago. I'll bet it's close to two<br/>10 years.<br/>11 Q. Have you signed any kind of agreement with<br/>12 counsel to be part of this lawsuit?<br/>13 A. Yes.<br/>14 Q. Okay. And does it -- has anyone, at any<br/>15 time, offered you a bonus or incentive to become part<br/>16 of this lawsuit, a monetary incentive to become part<br/>17 of the lawsuit?<br/>18 A. No.<br/>19 Q. And did you -- there's a second amended<br/>20 complaint in this case and I'm wondering: Is that<br/>21 something that you think you've seen?<br/>22 A. I don't know.<br/>23 Q. Okay. Did you read a complaint in this<br/>24 case before it was filed, to your knowledge?<br/>25 A. I believe that I did.</p> |

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| <p style="text-align: right;">Page 70</p> <p>1 Q. Okay. We can -- we'll talk about that</p> <p>2 more in a bit.</p> <p>3 Did you have any discussions with your</p> <p>4 spouse about whether she would be a plaintiff?</p> <p>5 A. No.</p> <p>6 Q. Okay. And obviously, she is not a</p> <p>7 plaintiff, correct?</p> <p>8 A. That's correct.</p> <p>9 Q. Do you know why that is?</p> <p>10 A. There's no reason for her to be.</p> <p>11 Q. And what do you mean by that?</p> <p>12 A. Well, she's -- you know, she's not -- she</p> <p>13 doesn't keep up with the problems and repairs and</p> <p>14 things in the house that I do, so I have the</p> <p>15 information that it takes to do this and she just</p> <p>16 doesn't.</p> <p>17 Q. Have you discussed the plumbing issues in</p> <p>18 your home with her?</p> <p>19 A. Yes.</p> <p>20 Q. What have those discussions been?</p> <p>21 A. Detail of all the repairs we've had to</p> <p>22 endure, you know, what the remedies were going to be.</p> <p>23 She knows about the lawsuit and so on.</p> <p>24 Q. What are you seeking compensation for in</p> <p>25 this lawsuit?</p>                                                                   | <p style="text-align: right;">Page 72</p> <p>1 called Zurn, Z-u-r-n, PEX installed at your home at</p> <p>2 some point?</p> <p>3 A. I'm not aware.</p> <p>4 Q. Okay. And so I'm guessing you probably</p> <p>5 don't know who installed the Zurn PEX, right?</p> <p>6 A. True. Yes.</p> <p>7 Q. Or when it was installed?</p> <p>8 A. Yes.</p> <p>9 Q. Did you know that there was Zurn PEX</p> <p>10 tubing found to be leaking in the crawlspace as part</p> <p>11 of an inspection of your home earlier this year for</p> <p>12 this lawsuit?</p> <p>13 A. I do now. I remember now, yes.</p> <p>14 MR. NASH: Objection.</p> <p>15 Q. (By Mr. Weslander) What do you know about</p> <p>16 that?</p> <p>17 A. They found -- you know, it was when they</p> <p>18 came to do the inspection and test the water and so</p> <p>19 on as a part of this case. They -- and I can't -- I</p> <p>20 don't know if it was a fitting or if it was pipe, I</p> <p>21 don't know the details, but I know that they did find</p> <p>22 a small leak, and that's all I know, and they fixed</p> <p>23 it.</p> <p>24 Q. And "they" is who?</p> <p>25 A. The plumber that was on-site that day as</p>        |
| <p style="text-align: right;">Page 71</p> <p>1 A. Well, I just want them to recognize that</p> <p>2 they have a defective product on the market and</p> <p>3 anybody that does -- has had to go to great expense</p> <p>4 to repair it, I do want them to be compensated. And</p> <p>5 I haven't had to spend much money on this myself but</p> <p>6 a lot of time away from work, which is worth</p> <p>7 something.</p> <p>8 Q. So you're hoping that you'll be</p> <p>9 compensated for time you were not able to spend</p> <p>10 working?</p> <p>11 A. I think that would be acceptable.</p> <p>12 Q. Anything else?</p> <p>13 A. On a personal level?</p> <p>14 Q. No. Any other compensation --</p> <p>15 A. Any other compensation?</p> <p>16 Q. -- that you're seeking?</p> <p>17 A. No.</p> <p>18 Q. Beyond time that you were not able to</p> <p>19 spend working, is there anything that you think that</p> <p>20 NIBCO should pay to you?</p> <p>21 MR. NASH: Objection.</p> <p>22 THE WITNESS: I believe they should pay</p> <p>23 the \$150 invoice that I did pay to Bill Ewing.</p> <p>24 Q. (By Mr. Weslander) Do you know, at some</p> <p>25 point, that there has been some of a brand of PEX</p> | <p style="text-align: right;">Page 73</p> <p>1 part of the inspection.</p> <p>2 Q. Do you know where that plumber was from or</p> <p>3 what business that plumber was affiliated with?</p> <p>4 A. I do not. He was chosen by the</p> <p>5 inspectors.</p> <p>6 Q. Okay. I just didn't know if it was Dupree</p> <p>7 or someone --</p> <p>8 A. I know --</p> <p>9 Q. -- who had been there before.</p> <p>10 THE COURT REPORTER: What did you say?</p> <p>11 THE WITNESS: It was not Dupree.</p> <p>12 THE COURT REPORTER: Thank you.</p> <p>13 MR. WESLANDER: Sorry, I talked over you.</p> <p>14 I said that you shouldn't do that.</p> <p>15 THE COURT REPORTER: First time.</p> <p>16 Q. (By Mr. Weslander) And just to be clear,</p> <p>17 the leaks that we've talked about up until now, was</p> <p>18 there any kind of pictures or video documentation</p> <p>19 that you took of these in any way?</p> <p>20 A. No.</p> <p>21 Q. Do you know if anyone else took pictures</p> <p>22 or video? And I'm not talking about the inspection.</p> <p>23 A. Uh-huh.</p> <p>24 Q. But the six leaks we talked about earlier,</p> <p>25 did anyone else document them in any way, to your</p> |



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| <p style="text-align: right;">Page 74</p> <p>1 knowledge?</p> <p>2 A. Not that I know of.</p> <p>3 Q. Okay. In terms of installing --</p> <p>4 replumbing the home with the new PEX, did you do any</p> <p>5 research as part of that decision, in terms of a</p> <p>6 particular brand of PEX to choose?</p> <p>7 A. I did not, no.</p> <p>8 Q. And did you retain any documents; did you</p> <p>9 keep anything about the replumb?</p> <p>10 A. No. There was nothing to keep.</p> <p>11 Q. Okay. And for any of the leaks that we've</p> <p>12 talked about, did you contact NIBCO?</p> <p>13 A. No.</p> <p>14 Q. Why not?</p> <p>15 A. Because my warranty was with the plumber,</p> <p>16 so that was my recourse. There just didn't seem to</p> <p>17 be a need to contact NIBCO.</p> <p>18 Q. Do you know if a contractor or plumber,</p> <p>19 Dupree, or Bill Ewing, for that matter, ever</p> <p>20 contacted NIBCO regarding the leaks in your home?</p> <p>21 A. I believe that they did.</p> <p>22 Q. And what are you basing that on?</p> <p>23 A. A phone conversation I had with Larry Reno</p> <p>24 at Dupree early on when -- around leak No. 3, I</p> <p>25 believe.</p>  | <p style="text-align: right;">Page 76</p> <p>1 moment and look at this. I know it's a large</p> <p>2 document, but I'm curious if you've ever seen this</p> <p>3 before.</p> <p>4 A. I can't say that I have.</p> <p>5 Q. And do you see it's dated -- at the top of</p> <p>6 the very first page of this document, there's a term</p> <p>7 that says Filed June 19th of 2015?</p> <p>8 A. Uh-huh.</p> <p>9 Q. It actually says 6/19 of '15.</p> <p>10 A. Yes, I see.</p> <p>11 Q. Okay. Let me just ask you about a couple</p> <p>12 specific pieces of this. Bear with me a second here.</p> <p>13 A. I think I have seen this document. Sorry</p> <p>14 to go back on you like that.</p> <p>15 Q. That's okay. And what makes you say that?</p> <p>16 A. Well, pictures.</p> <p>17 Q. Seeing the pictures, it jumps out in your</p> <p>18 mind?</p> <p>19 A. Yeah. Very -- very...</p> <p>20 Q. Some people are visual; I get it.</p> <p>21 A. That's me.</p> <p>22 Q. Let's go to Page 19 of this document, and</p> <p>23 so I'm looking at -- are you at Page 19?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And do you see your name at the top</p>                                                                                                                                                                               |
| <p style="text-align: right;">Page 75</p> <p>1 Q. And do you remember what he said?</p> <p>2 A. I believe he said, We've gotten in touch</p> <p>3 with NIBCO and told them about our problems. But he</p> <p>4 didn't give any more detail than that.</p> <p>5 Q. And did Dupree ever discuss the terms of</p> <p>6 the NIBCO warranty with you?</p> <p>7 A. No.</p> <p>8 Q. Did they ever give you a copy of the NIBCO</p> <p>9 warranty?</p> <p>10 A. No.</p> <p>11 Q. And have you ever seen the NIBCO warranty?</p> <p>12 A. No.</p> <p>13 Q. Let's see. And did you make any insurance</p> <p>14 claims, in terms of a homeowner's claim on a</p> <p>15 homeowner policy, related to any of these leaks?</p> <p>16 A. No.</p> <p>17 Q. Okay. And why not?</p> <p>18 A. Because Dupree was covering the cost and</p> <p>19 there was no money spent on my part.</p> <p>20 (Defendant's Exhibit-2 was marked for</p> <p>21 identification.)</p> <p>22 Q. (By Mr. Weslander) Let me hand you what</p> <p>23 I'm going to mark as Defendant's Exhibit 2. This is</p> <p>24 a copy of the Second Amended Class Action Complaint</p> <p>25 in this action. And I'll ask you to just take a</p> | <p style="text-align: right;">Page 77</p> <p>1 there?</p> <p>2 A. Yes.</p> <p>3 Q. All right. Looking at paragraph 107,</p> <p>4 which is about halfway down the page, there's a</p> <p>5 statement in this that Plaintiff McCoy, yourself,</p> <p>6 quote, hired a licensed professional contractor to</p> <p>7 install the plumbing system in his home, end quote.</p> <p>8 Is that correct?</p> <p>9 A. Well, there's not a lot of information</p> <p>10 there. At what point? What date?</p> <p>11 Q. Well, did you -- did you hire a licensed</p> <p>12 professional contractor to install the NIBCO PEX</p> <p>13 tubing in your home?</p> <p>14 A. Well, the plumbing contractor was chosen</p> <p>15 by my general contractor, Roger Bridges, so I did not</p> <p>16 directly hire them.</p> <p>17 Q. Okay. And at paragraph 109 at the bottom</p> <p>18 of the page, there is a reference to -- let's see.</p> <p>19 It says that you have, quote, suffered an</p> <p>20 ascertainable loss, end quote. And I'm going on,</p> <p>21 stating -- it states that this includes, quote, but</p> <p>22 not limited to, out-of-pocket loss associated with</p> <p>23 catastrophic plumbing failures and attempted repairs</p> <p>24 of such within his home, end quote.</p> <p>25 Beyond the \$150 to Bill Ewing, is there</p> |

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| <p style="text-align: right;">Page 78</p> <p>1 any other out-of-pocket loss to you?</p> <p>2 A. No money spent. Just, like I said, a lot</p> <p>3 of time from work, a lot.</p> <p>4 Q. How many hours of work do you think you</p> <p>5 missed because of --</p> <p>6 A. It's easier to count in days, because each</p> <p>7 of the first -- each of Repairs 2 through 5 took most</p> <p>8 of a day, so I had to take a whole day off work for</p> <p>9 those; and then another whole day -- no, I'm sorry,</p> <p>10 two whole days for the tile repair. So each one of</p> <p>11 those is three days off work.</p> <p>12 And then the last plumbing replacement,</p> <p>13 where we replaced all the plumbing in the house,</p> <p>14 probably totaled about a week.</p> <p>15 So we're talking a couple weeks -- let's</p> <p>16 see, no, several weeks off of work for all of this.</p> <p>17 Q. Okay. Paragraph 108 -- I'm backing up</p> <p>18 now -- it states that, at the very beginning of</p> <p>19 paragraph 108, that, quote, The NIBCO tubing</p> <p>20 repeatedly failed, requiring six repairs.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And so that would be six repairs prior to</p> <p>24 the filing of this document in June of 2015, correct?</p> <p>25 A. Correct.</p> | <p style="text-align: right;">Page 80</p> <p>1 A. I would say that is true, that never</p> <p>2 happened --</p> <p>3 Q. Okay.</p> <p>4 A. -- that in so much that they never</p> <p>5 repaired or replaced any PEX products in my home,</p> <p>6 that's what I mean by that.</p> <p>7 Q. Okay. Sure. Well, let me make sure I'm</p> <p>8 tracking you.</p> <p>9 Is it true to say that NIBCO has -- so are</p> <p>10 you saying that it's accurate to say that NIBCO has</p> <p>11 failed to repair or replace the products because they</p> <p>12 simply never did any repair or replacement work at</p> <p>13 your home?</p> <p>14 A. That is true, yes.</p> <p>15 Q. Okay. But you've never asked NIBCO to</p> <p>16 repair or replace a product and they failed to do it,</p> <p>17 have you?</p> <p>18 A. Not directly, but I believe that Dupree</p> <p>19 did. That's what they were seeking in contacting</p> <p>20 NIBCO, was, you know: Help us to repair this, give</p> <p>21 us some pipe and fittings, help us out here. And</p> <p>22 they didn't get anything from them.</p> <p>23 Q. Okay. And how do you know that?</p> <p>24 A. That conversation I told you earlier about</p> <p>25 with Larry Reno.</p> |
| <p style="text-align: right;">Page 79</p> <p>1 Q. Okay. I'm going on now to the next page,</p> <p>2 at paragraph 110. So at the top of Page 20, you</p> <p>3 should see paragraph 110, and it states, quote, On or</p> <p>4 about May 28, 2015, Plaintiff McCoy provided NIBCO</p> <p>5 with actual notice of the failures of its PEX</p> <p>6 products. And I'll stop there. End quote.</p> <p>7 Do you know what that is referring to?</p> <p>8 A. I think it must have been provided on</p> <p>9 behalf of -- by Dupree on my behalf. That's the only</p> <p>10 explanation for that, because I did not send an</p> <p>11 invoice directly.</p> <p>12 Q. You have never, yourself, given NIBCO</p> <p>13 notice of anything in this case, right?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. And when it says that there was</p> <p>16 notice that NIBCO failed to repair or replace the PEX</p> <p>17 products within the McCoy home, did that ever happen?</p> <p>18 A. Are we on 111?</p> <p>19 Q. Same one. 110. Sorry.</p> <p>20 A. 110?</p> <p>21 Q. Same paragraph. In the second part of</p> <p>22 that sentence, you'll see, quote, NIBCO has failed to</p> <p>23 repair or replace the PEX products within the McCoy</p> <p>24 home. Quote/end quote.</p> <p>25 Has that ever happened?</p>           | <p style="text-align: right;">Page 81</p> <p>1 Q. Okay. That you're basing that on your</p> <p>2 discussion with a representative of Dupree?</p> <p>3 A. Yes.</p> <p>4 Q. And in terms of otherwise fulfilling</p> <p>5 warranty obligations, has there ever been an</p> <p>6 obligation, a warranty -- have you ever asked NIBCO</p> <p>7 to do anything under its warranty that it has not</p> <p>8 done, you personally?</p> <p>9 A. No.</p> <p>10 Q. Okay. Let me move ahead. I'm looking at</p> <p>11 Page 23 now.</p> <p>12 A. Okay.</p> <p>13 Q. Take your time to get there, and once you</p> <p>14 do, it's the very first paragraph on that page,</p> <p>15 numbered 123. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. It states, at the very beginning of this</p> <p>18 paragraph, quote, Plaintiffs and the putative class</p> <p>19 substantially complied with their obligations under</p> <p>20 the NIBCO PEX warranty, end quote.</p> <p>21 Do you have any idea of what your</p> <p>22 obligations were under the NIBCO PEX warranty?</p> <p>23 A. I do not, no.</p> <p>24 Q. Okay. Let's go ahead a bit of distance</p> <p>25 now in this document to Page 47, and I'm looking at</p>                 |



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| <p style="text-align: right;">Page 82</p> <p>1 Page -- paragraph 242. And I realize there's a<br/> 2 reference to a couple different homes that are not<br/> 3 yours in this paragraph, but you'll see that this<br/> 4 count higher up on the page relates to Georgia<br/> 5 residents, so I'd like to ask you about it.<br/> 6 Do you have any idea -- I'm looking at<br/> 7 paragraph 242, again. There's a reference to the<br/> 8 products reaching homes, quote, without substantial<br/> 9 change in the conditions in which they were designed,<br/> 10 manufactured, assembled, distributed, marketed, and<br/> 11 sold by NIBCO, end quote.<br/> 12 Do you see that?<br/> 13 A. Yes.<br/> 14 Q. Do you have any idea about the conditions<br/> 15 in which NIBCO designed, manufactured, assembled,<br/> 16 distributed, marketed, and sold its products?<br/> 17 A. The only thing I could say to that is that<br/> 18 I know they manufacture and sell direct to their<br/> 19 distributors, and then that's how they get to market.<br/> 20 The plumbers buy it from the distributors. Very much<br/> 21 like the pool business.<br/> 22 Q. Okay. Any other information that you have<br/> 23 about these conditions?<br/> 24 A. No.<br/> 25 Q. Okay. I'm looking now at the next page,</p> | <p style="text-align: right;">Page 84</p> <p>1 affected area, clean it with Clorox, and that's all<br/> 2 that I know that they have done.<br/> 3 Q. Okay. And this is remedial work done by<br/> 4 Dupree --<br/> 5 A. Yes.<br/> 6 Q. -- Plumbing?<br/> 7 A. Yes.<br/> 8 Q. And do you know when this was done?<br/> 9 A. On the last leak, which would be No. 6, I<br/> 10 believe, I know is when they did that.<br/> 11 Q. Okay. And has their work, in your<br/> 12 opinion, repaired this damage?<br/> 13 A. There's not -- when it comes to mold, it<br/> 14 can be in places you can't see. I can't answer that.<br/> 15 Q. Okay. So if there is additional mold that<br/> 16 they did not remediate it, you don't know about it as<br/> 17 you sit here today?<br/> 18 A. Yes.<br/> 19 Q. Correct that you don't know about it?<br/> 20 A. Yes.<br/> 21 Q. Okay. So you can go ahead and set that<br/> 22 aside for now.<br/> 23 Let's see. I'm going to now hand you what<br/> 24 I'm marking as Exhibit 3, and these are your<br/> 25 responses to NIBCO's first set of interrogatories.</p>                                                                                                                                                     |
| <p style="text-align: right;">Page 83</p> <p>1 48, and I'm looking at paragraph 246. And I'm<br/> 2 looking there particularly at No. 1, item No. 1<br/> 3 within that paragraph, and it states that NIBCO PEX<br/> 4 products, quote, were not reasonably safe for<br/> 5 ordinary and intended use, end quote.<br/> 6 Do you believe that to be true, that these<br/> 7 products were not reasonably safe?<br/> 8 A. Yes, I do.<br/> 9 Q. And what do you base that on?<br/> 10 A. All the failures that I've seen.<br/> 11 Q. And under paragraph 248 there's a<br/> 12 reference to property damage. Have you, in fact,<br/> 13 suffered property damage?<br/> 14 A. I -- I believe that mold in the walls is<br/> 15 property damage. I do agree with that.<br/> 16 Q. And do you -- is it your testimony you<br/> 17 have mold in your walls?<br/> 18 A. Yes, we have had mold on the walls.<br/> 19 Q. And where is that?<br/> 20 A. In the bathrooms where the leaks occurred.<br/> 21 Q. Have you taken any actions to remediate<br/> 22 this mold?<br/> 23 A. Yes.<br/> 24 Q. What have you done?<br/> 25 A. Dupree went to extensive length to dry the</p>                                                                                                                                    | <p style="text-align: right;">Page 85</p> <p>1 (Defendant's Exhibit-3 was marked for<br/> 2 identification.)<br/> 3 Q. (By Mr. Weslander) I'll ask you to take a<br/> 4 moment and look at those and let me know when you've<br/> 5 had a chance to glance through it.<br/> 6 A. I'm not going to read them all, but I<br/> 7 remember giving those answers.<br/> 8 Q. Okay. And that was actually my next<br/> 9 question, is -- it doesn't look like we have here,<br/> 10 attached to this version anyway, a verification page.<br/> 11 Do you recall signing a sworn statement that verified<br/> 12 that this information was accurate?<br/> 13 A. Uh-huh. Yes, I do.<br/> 14 Q. Okay. And to the best of your knowledge,<br/> 15 is that, in fact, true; are these answers true and<br/> 16 accurate, to the best of your knowledge?<br/> 17 A. As long as they're consistent with the<br/> 18 answers I gave, then yes. Like I said, if you want<br/> 19 to give me time to read them all, I will. It's up to<br/> 20 you.<br/> 21 Q. Well, why don't you take a moment to do<br/> 22 that. Let's go off the record --<br/> 23 A. Okay.<br/> 24 Q. -- and just take your time. I do want to<br/> 25 make sure that you satisfy yourself on that.</p> |

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| <p style="text-align: right;">Page 86</p> <p>1 A. Okay.</p> <p>2 MR. WESLANDER: So let's go off the record</p> <p>3 briefly and give Mr. McCoy a chance to read</p> <p>4 these.</p> <p>5 (Discussion off the record.)</p> <p>6 THE WITNESS: Okay.</p> <p>7 Q. (By Mr. Weslander) Okay. Mr. McCoy, we</p> <p>8 had a short break and during that time, I know you've</p> <p>9 been reading through answers to NIBCO's first</p> <p>10 interrogatories which I just handed you as Exhibit 3.</p> <p>11 Have you had a chance to fully review those?</p> <p>12 A. Yes.</p> <p>13 Q. Is there anything in those, upon review,</p> <p>14 that you find to be inaccurate?</p> <p>15 A. No.</p> <p>16 Q. Okay. I'm looking at the answer to</p> <p>17 interrogatory No. 13, and there's a reference in the</p> <p>18 answer to Larry Reno of Dupree Plumbing stating that</p> <p>19 he has knowledge regarding your issues at your home.</p> <p>20 Is that based on the discussion that you</p> <p>21 mentioned earlier with Mr. Reno?</p> <p>22 A. Yes, it is.</p> <p>23 Q. Okay. Any other basis that Mr. Reno may</p> <p>24 have, to your knowledge, to have information about</p> <p>25 your repairs?</p> | <p style="text-align: right;">Page 88</p> <p>1 understand what you're saying, you don't think that</p> <p>2 you've ever had a copy of Pages 2, 3, 4 and 5 of this</p> <p>3 exhibit?</p> <p>4 A. That is correct.</p> <p>5 Q. Okay. Do you have any idea where these</p> <p>6 came from?</p> <p>7 A. I would say I probably -- I may have</p> <p>8 called Dupree and had them send them or e-mail them,</p> <p>9 I don't recall. But, I mean, even though these are</p> <p>10 correct, I'm just not the one -- they didn't come</p> <p>11 directly from me.</p> <p>12 Q. You may have asked Dupree to --</p> <p>13 A. I may have asked them to fax them or</p> <p>14 e-mail them.</p> <p>15 Q. Okay. So do you believe you have any</p> <p>16 additional relevant documents, beyond these five</p> <p>17 pages, anything related to your leaks or damages that</p> <p>18 you're claiming that have not been produced to</p> <p>19 attorneys?</p> <p>20 A. No. I have been thorough in my search for</p> <p>21 those.</p> <p>22 Q. And it sounds as though the only document</p> <p>23 that you personally came up with is this very first</p> <p>24 page from Bill Ewing?</p> <p>25 A. Yes.</p> |
| <p style="text-align: right;">Page 87</p> <p>1 A. No.</p> <p>2 Q. Okay. You can set that one aside. Thank</p> <p>3 you.</p> <p>4 A. Uh-huh.</p> <p>5 Q. And let me give you now what I'm marking</p> <p>6 as Exhibit 4.</p> <p>7 (Defendant's Exhibit-4 was marked for</p> <p>8 identification.)</p> <p>9 Q. (By Mr. Weslander) So here is Exhibit 4,</p> <p>10 and I'll ask you to look at these and tell me if you</p> <p>11 recognize these documents.</p> <p>12 A. (Witness complies.)</p> <p>13 Q. Okay. Have you finished looking through</p> <p>14 those?</p> <p>15 A. Yes.</p> <p>16 Q. And do you recognize these?</p> <p>17 A. I have a copy of this invoice from Bill</p> <p>18 Ewing. And I do not have copies of all the Dupree</p> <p>19 documents; I have not seen them before.</p> <p>20 Q. Okay. I was going to ask: Are you aware</p> <p>21 that you were asked to locate and produce various</p> <p>22 documents and information as part of this litigation?</p> <p>23 A. Yes.</p> <p>24 Q. And these are documents that have been</p> <p>25 produced to us as your documents. But if I</p>                                                                                         | <p style="text-align: right;">Page 89</p> <p>1 Q. Okay. And that's -- when I say "the first</p> <p>2 page," I mean the first page of Exhibit 4?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. This one -- let's talk about these</p> <p>5 maybe in chronological order, if we could.</p> <p>6 The very first of these five pages is</p> <p>7 shown as being a service invoice. And I'm looking at</p> <p>8 McCoy 00005, which is the number in the bottom</p> <p>9 right-hand corner. It is a service invoice from</p> <p>10 Dupree Plumbing, and the date in the middle of the</p> <p>11 page says scheduled 4/23/2013.</p> <p>12 Do you see that in the middle of the page,</p> <p>13 roughly?</p> <p>14 A. Yes, I do.</p> <p>15 Q. Okay. And it states here under Notes,</p> <p>16 quote, Technician made repair on 3-inch PVC drain</p> <p>17 line serving washing machine that was leaking --</p> <p>18 A. Uh-huh.</p> <p>19 Q. -- dash, bad pipe.</p> <p>20 Did I read that correctly?</p> <p>21 A. Yes.</p> <p>22 Q. Is this -- do you have any idea what</p> <p>23 repair this is referring to?</p> <p>24 A. Yes.</p> <p>25 Q. What is that?</p>                                                  |

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| <p style="text-align: right;">Page 90</p> <p>1 A. That is -- well, it's exactly what it says<br/> 2 it is. It's a -- they had a repair line where a glue<br/> 3 joint came loose at an elbow and water was coming out<br/> 4 of there. But that is not really related to the PEX,<br/> 5 so maybe they just -- I don't know. But that's what<br/> 6 it's for.</p> <p>7 Q. Okay. So that's what I was getting at.<br/> 8 This is unrelated to PEX, as far as you can tell?</p> <p>9 A. As far as I can tell.</p> <p>10 Q. Okay. Let's look at the next one in<br/> 11 chronological order, which would be the previous<br/> 12 page, which is labeled 00004 at the bottom. Do you<br/> 13 see there this appears to be another invoice from<br/> 14 Dupree Plumbing, and this time the scheduled date is<br/> 15 April -- sorry, May 6, 2013?</p> <p>16 A. Yes, I see.</p> <p>17 Q. Okay. And under that, notes state, quote,<br/> 18 Technician had to repair leak on PEX line that was<br/> 19 leaking at the water heater area.</p> <p>20 Did I read that correctly?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know which -- of the repairs that<br/> 23 we talked about earlier, 1 through 6, do you know<br/> 24 which one this is referring to?</p> <p>25 A. I could only guess. I don't know exactly</p> | <p style="text-align: right;">Page 92</p> <p>1 A. Right.</p> <p>2 Q. And this one refers to cracked NIBCO PEX<br/> 3 water line, in the middle of the page. Do you see<br/> 4 that?</p> <p>5 A. Yes.</p> <p>6 Q. Do you know what this is referring to,<br/> 7 given that I believe your testimony earlier was that<br/> 8 Mr. Ewing did the very first repair on your home?</p> <p>9 A. Well, I know what that was, but he had to<br/> 10 -- I believe it's dated kind of odd because I think<br/> 11 he did this invoice later on in time.</p> <p>12 Q. Do you know why he would have done that?</p> <p>13 A. Huh-uh, I don't.</p> <p>14 Q. Did you ask him to create that invoice?</p> <p>15 A. No.</p> <p>16 Q. Do you have any idea when you first saw or<br/> 17 received this invoice?</p> <p>18 A. You know, I want to say it was around that<br/> 19 time, because I know the leaks started happening not<br/> 20 too far after the completion of the house, and that<br/> 21 was the middle of 2010, early 2010.</p> <p>22 You know, he probably -- builders, the way<br/> 23 they are, they're disorganized as they can be. He<br/> 24 probably, even though I paid him then, he probably<br/> 25 had to create another invoice and just, you know,</p>          |
| <p style="text-align: right;">Page 91</p> <p>1 which one, no.</p> <p>2 Q. Okay. And I think you said you had two<br/> 3 repairs, I believe it was second and the third, that<br/> 4 were near the water heater in the crawlspace; is that<br/> 5 correct?</p> <p>6 A. Yes. This would have to be one of those<br/> 7 two.</p> <p>8 Q. Okay. Got it. But you can't say<br/> 9 independently based on your memory and looking at<br/> 10 this document whether it was the first of those<br/> 11 repairs or the second?</p> <p>12 A. That's correct.</p> <p>13 Q. Okay. Okay. And we talked about that,<br/> 14 whether it's the, we'll call it, repair No. 2 or<br/> 15 repair No. 3, we talked about those earlier.</p> <p>16 Let's look at the next one, in<br/> 17 chronological order would be the first page, which is<br/> 18 the Bill Ewing invoice.</p> <p>19 A. Uh-huh.</p> <p>20 Q. And it's listed as -- the date at the top<br/> 21 right I see is 9/3/13; although it looks like there's<br/> 22 an extra 13 there. But --</p> <p>23 A. Uh-huh.</p> <p>24 Q. -- it sure appears to be 9/3 of '13,<br/> 25 correct?</p>                                                                                                                                                                         | <p style="text-align: right;">Page 93</p> <p>1 gave it to me on the date that he did the invoice.<br/> 2 That's just a guess, though.</p> <p>3 Q. Okay. So Mr. Ewing, though, has only come<br/> 4 to your home to do plumbing repair the one instance<br/> 5 that you identified earlier in your testimony, right?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. And so if this invoice is dated 9/3<br/> 8 of '13, it's actually referring to a repair done as<br/> 9 many as two or three years earlier?</p> <p>10 A. Yes. Yes, that is true.</p> <p>11 Q. But just to be clear, you don't know<br/> 12 Mr. Ewing's reasoning for making the invoice on the<br/> 13 date that's shown on this document?</p> <p>14 A. No, I do not.</p> <p>15 Q. Okay. So let's look at now the next one<br/> 16 in chronological order, which would be the one that<br/> 17 is at the bottom right-hand of the page marked McCoy<br/> 18 00003. And that is also a service invoice from<br/> 19 Dupree Plumbing, correct?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And do you see the scheduled date<br/> 22 there is, in the middle of the page, 9/15/2013?</p> <p>23 A. Yes.</p> <p>24 Q. And I'm going to read the Notes section<br/> 25 underneath that, which states, quote, Pipe burst in</p> |

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| <p style="text-align: right;">Page 94</p> <p>1 wall between two tile showers; dash, took out tile to</p> <p>2 make repair on PEX; dash, three-quarter PEX was</p> <p>3 split; dash, Mr. McCoy to send us repair bills.</p> <p>4 Did I read that correctly?</p> <p>5 A. Yes.</p> <p>6 Q. And to the best of your knowledge, does</p> <p>7 this refer to the first instance where there had to</p> <p>8 be tile removed?</p> <p>9 A. I do not know if it was the first instance</p> <p>10 or not.</p> <p>11 Q. Okay. But one -- I think we talked about</p> <p>12 three cases earlier of bathroom-related repairs and</p> <p>13 tile having to be removed, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And to the best of your knowledge, this is</p> <p>16 one of those, right?</p> <p>17 A. Yes.</p> <p>18 Q. Not an additional repair that we didn't</p> <p>19 talk about before?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Let's see here. And it states,</p> <p>22 Mr. McCoy to send us repair bills.</p> <p>23 Do you know if you did that?</p> <p>24 A. I know that I did not do that, because the</p> <p>25 bills they're referring to are the tile repair, and</p> | <p style="text-align: right;">Page 96</p> <p>1 of the page states 12/2 of 2013. Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And I will once again read the</p> <p>4 Notes page for this one, and it states, quote:</p> <p>5 Technician had to remove tile again to make repair on</p> <p>6 NIBCO PEX pipe that was leaking. Second trip for</p> <p>7 another leak.</p> <p>8 A. Uh-huh.</p> <p>9 Q. And did I read that correctly?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. So does this refresh your memory in</p> <p>12 terms of the sequence of these repairs?</p> <p>13 A. Not much. I mean, I can only assume.</p> <p>14 So by this time, if they had to make a</p> <p>15 tile repair, that means by that time the leak was up</p> <p>16 in the wall. And Bill Ewing did the first repair;</p> <p>17 Dupree did the second and the third one, to my</p> <p>18 memory, that were all under the house; and then</p> <p>19 everything else was up in the house.</p> <p>20 So this second trip for another leak, I</p> <p>21 mean, I don't know how that -- which leak that was.</p> <p>22 I just know this is an invoice for one of those</p> <p>23 series of leaks that was -- but you can't say which</p> <p>24 one it was.</p> <p>25 Q. Okay. Were there --</p> |
| <p style="text-align: right;">Page 95</p> <p>1 it turned out that the tile contractor sent the bills</p> <p>2 directly to Dupree --</p> <p>3 Q. Okay.</p> <p>4 A. -- so there was nothing for me to send.</p> <p>5 Q. So after this repair, the tile contractor</p> <p>6 that had originally done the tile in your rebuilt</p> <p>7 home came back?</p> <p>8 A. Uh-huh, yes.</p> <p>9 Q. Okay. And to your knowledge, they sent</p> <p>10 their bills directly to Dupree?</p> <p>11 A. That is correct.</p> <p>12 Q. Okay. You never saw them?</p> <p>13 A. Correct.</p> <p>14 Q. All right. The next in this series will</p> <p>15 be at -- excuse me here.</p> <p>16 We're on September 15th, 2013. Now I'm</p> <p>17 going to look at the only remaining page we have not</p> <p>18 looked at, by process of elimination, as Page 2 of</p> <p>19 this exhibit. Down on the bottom right, do you see</p> <p>20 it's marked McCoy 00002?</p> <p>21 A. Yes.</p> <p>22 Q. And this is again a service invoice from</p> <p>23 Dupree Plumbing.</p> <p>24 A. Uh-huh.</p> <p>25 Q. And the scheduled date here in the middle</p>                                     | <p style="text-align: right;">Page 97</p> <p>1 A. But because this is December of '13 and</p> <p>2 the one before it was September, this means that it</p> <p>3 was up in the wall and there was tile repair</p> <p>4 involved, so that means it was not the second trip.</p> <p>5 So I think that's just a -- just a mistake.</p> <p>6 Q. Okay. It could be that this is the second</p> <p>7 that required removing tile --</p> <p>8 A. That could be. That's possible.</p> <p>9 Q. -- but maybe Dupree's third visit to the</p> <p>10 home --</p> <p>11 A. It could be very possible.</p> <p>12 Q. -- for repairs?</p> <p>13 A. Uh-huh.</p> <p>14 Q. Well, so we have -- in these five pages of</p> <p>15 documents, each page relates to a separate repair,</p> <p>16 and we have one page that relates to a non-PEX issue,</p> <p>17 which is the final page, Page No. 5.</p> <p>18 A. Uh-huh.</p> <p>19 Q. Would you agree?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. So if we take out that last page,</p> <p>22 there are four PEX-related repairs?</p> <p>23 A. Uh-huh.</p> <p>24 Q. And I know that as of -- well, you</p> <p>25 testified earlier that the sixth repair would have</p>                                                                             |

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| <p style="text-align: right;">Page 98</p> <p>1 been in early 2016. What I'm trying to figure out is</p> <p>2 how we get to six repairs identified in the second</p> <p>3 amended complaint as of its filing in 2015.</p> <p>4 A. Well, there's more trips to my home to</p> <p>5 make repairs than are reflected in these invoices. I</p> <p>6 know that to be a fact. And I think getting with</p> <p>7 Dupree, digging a little harder in their computer</p> <p>8 system or files or whatever could fix that problem.</p> <p>9 Q. Okay. So seeing these documents doesn't</p> <p>10 change your -- well, let me ask: Does seeing these</p> <p>11 documents change at all your recollection of the</p> <p>12 sequence of the six that we talked about earlier?</p> <p>13 A. No.</p> <p>14 Q. You feel confident about those six in</p> <p>15 terms of roughly the time frame and the order in</p> <p>16 which they occurred?</p> <p>17 A. I do.</p> <p>18 Q. Okay. Let's see. You can set that one</p> <p>19 aside for now. Let's see.</p> <p>20 Are you making any -- do you have any</p> <p>21 information to believe that NIBCO fittings in your</p> <p>22 home failed?</p> <p>23 A. And fittings being separate from pipe?</p> <p>24 Q. Correct.</p> <p>25 A. No, I do not.</p> | <p style="text-align: right;">Page 100</p> <p>1 literature or information about NIBCO products?</p> <p>2 A. No.</p> <p>3 MR. WESLANDER: Let's go off the record.</p> <p>4 (Discussion off the record.)</p> <p>5 Q. (By Mr. Weslander) Just to clarify, in</p> <p>6 terms of looking for documentation related to these</p> <p>7 repairs and leaks, tell me what you have done</p> <p>8 personally to try to ensure that you have provided</p> <p>9 everything to your attorneys by way of documentation.</p> <p>10 A. Well, I went through everything. When I</p> <p>11 did the rebuild of the home, I kept everything --</p> <p>12 everything that I had, every bid, every spec sheet,</p> <p>13 you know, just anything that had to do with the</p> <p>14 rebuild, I kept.</p> <p>15 So that was the first thing I did, is pore</p> <p>16 through there to see what I could find. And that's</p> <p>17 -- if anything was going to be able to be used, it</p> <p>18 would be there. So I found Bill Ewing's invoice and</p> <p>19 that was all that I found regarding information about</p> <p>20 repairs or the plumbing.</p> <p>21 Q. And did you personally contact Dupree and</p> <p>22 ask them to gather documents?</p> <p>23 A. I don't recall.</p> <p>24 MR. WESLANDER: I do not have any more</p> <p>25 questions at this time. I thank you for your</p> |
| <p style="text-align: right;">Page 99</p> <p>1 Q. And are you making any claims that the</p> <p>2 NIBCO clamps used to secure the pipe to the fitting</p> <p>3 failed?</p> <p>4 A. No.</p> <p>5 Q. Okay. Your claims, as they relate to</p> <p>6 NIBCO, are solely to the quality or manufacture of</p> <p>7 the tubing itself; is that fair?</p> <p>8 A. Yes.</p> <p>9 MR. NASH: Objection.</p> <p>10 Q. (By Mr. Weslander) Do you have any idea</p> <p>11 what store or distributor the NIBCO PEX tubing that</p> <p>12 was installed in your home came from?</p> <p>13 A. I do not.</p> <p>14 Q. Okay. Do you have any idea how it was</p> <p>15 stored after it left NIBCO?</p> <p>16 A. I do not.</p> <p>17 Q. Any idea how it was stored by Dupree</p> <p>18 Plumbing?</p> <p>19 A. No.</p> <p>20 Q. And just to be clear, you have never</p> <p>21 personally purchased any of the NIBCO piping that was</p> <p>22 installed in your home, right?</p> <p>23 A. Yes, that is correct.</p> <p>24 Q. And prior to the installation of NIBCO</p> <p>25 tubing in your home, had you -- had you reviewed any</p>                                                                                                                                                                   | <p style="text-align: right;">Page 101</p> <p>1 time, Mr. McCoy.</p> <p>2 THE WITNESS: You're welcome.</p> <p>3 EXAMINATION</p> <p>4 BY MR. NASH:</p> <p>5 Q. Mr. McCoy, I have a few questions for you.</p> <p>6 The first thing I want to do is go back to some</p> <p>7 testimony you gave earlier describing white marks</p> <p>8 around the splits in the tubing in your home that</p> <p>9 failed.</p> <p>10 A. Uh-huh.</p> <p>11 Q. Did you see any indication of a kink near</p> <p>12 those white marks?</p> <p>13 A. None whatsoever.</p> <p>14 Q. Any indication of a sharp bend?</p> <p>15 A. No.</p> <p>16 MR. WESLANDER: Object to the form.</p> <p>17 Q. (By Mr. Nash) Any indication that the</p> <p>18 tubing in that area was improperly installed, to the</p> <p>19 best of your knowledge?</p> <p>20 MR. WESLANDER: Again objection to form as</p> <p>21 vague --</p> <p>22 THE WITNESS: No. No indication.</p> <p>23 THE COURT REPORTER: Vague and --</p> <p>24 MR. WESLANDER: -- ambiguous.</p> <p>25 THE COURT REPORTER: Thank you.</p>                                                                                                                                                                                                                                                                                                      |



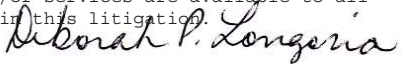

KELLY MCCOY

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| <p style="text-align: right;">Page 102</p> <p>1 Sir, if you will just let him get his</p> <p>2 objection out before you answer, then I won't</p> <p>3 have to interrupt.</p> <p>4 THE WITNESS: I'm sorry.</p> <p>5 THE COURT REPORTER: That's okay.</p> <p>6 THE WITNESS: Understood.</p> <p>7 Q. (By Mr. Nash) When the NIBCO PEX tubing</p> <p>8 was installed in your home during the rebuild, you</p> <p>9 testified earlier that you were present and visually</p> <p>10 inspected the installation, for the most part?</p> <p>11 A. Yes.</p> <p>12 Q. And you were also present for some or all</p> <p>13 of each of the repairs following each of the failures</p> <p>14 of that tubing?</p> <p>15 MR. WESLANDER: Objection;</p> <p>16 mischaracterizes his testimony.</p> <p>17 THE WITNESS: Yes.</p> <p>18 Q. (By Mr. Nash) Did you understand my</p> <p>19 question prior?</p> <p>20 A. Yes.</p> <p>21 Q. Based on your personal visual</p> <p>22 observations, do you have any reason to believe that</p> <p>23 any of the NIBCO PEX tubing at issue in this case was</p> <p>24 improperly installed?</p> <p>25 A. I do not.</p> | <p style="text-align: right;">Page 104</p> <p>1 Q. Do you understand today that you may have</p> <p>2 recourse against NIBCO in addition to Dupree</p> <p>3 Plumbing?</p> <p>4 MR. WESLANDER: Objection to form on</p> <p>5 various grounds. It calls for a legal</p> <p>6 conclusion. It's leading.</p> <p>7 Q. (By Mr. Nash) You can answer.</p> <p>8 A. Yes, I do.</p> <p>9 Q. Earlier you also testified to property</p> <p>10 damage in your home, including mold, which was</p> <p>11 remediated by Dupree Plumbing; is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. You also testified that there's a</p> <p>14 possibility, in your mind, there may still be</p> <p>15 additional mold that is as of yet undiscovered?</p> <p>16 A. Yes.</p> <p>17 Q. Is it possible that there may be other</p> <p>18 forms of property damage that are also as of yet</p> <p>19 undiscovered?</p> <p>20 MR. WESLANDER: Objection, calls for</p> <p>21 speculation.</p> <p>22 THE WITNESS: Yes, there could easily be.</p> <p>23 Q. (By Mr. Nash) Had you known during the</p> <p>24 rebuild that the NIBCO tubing and fittings and clamps</p> <p>25 that were installed in your home may have been</p>                                                                                                                                       |
| <p style="text-align: right;">Page 103</p> <p>1 Q. Do you have any reason to believe that it</p> <p>2 was improperly stored prior to installation?</p> <p>3 A. No, I don't.</p> <p>4 Q. Do you have any reason to believe that any</p> <p>5 of it was damaged prior to the installation?</p> <p>6 A. No.</p> <p>7 Q. Any reason to believe that any of it was</p> <p>8 kinked or bent or punctured or otherwise similarly</p> <p>9 damaged prior to installation?</p> <p>10 A. No, I don't.</p> <p>11 Q. Any reason to believe that any of the</p> <p>12 tubing in the home was improperly installed?</p> <p>13 A. No.</p> <p>14 Q. Earlier you testified that you believed</p> <p>15 your only recourse for the damages you experienced at</p> <p>16 your home was to Dupree Plumbing; is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. Are you an attorney?</p> <p>19 A. No.</p> <p>20 Q. Are you aware that the NIBCO products</p> <p>21 installed in your home came with a warranty?</p> <p>22 A. I was not aware.</p> <p>23 Q. Do you have any reason to believe that</p> <p>24 they did not come with a warranty?</p> <p>25 A. No.</p> | <p style="text-align: right;">Page 105</p> <p>1 predisposed to the types of failures you actually</p> <p>2 experienced, would you have permitted them to be</p> <p>3 installed in your home?</p> <p>4 MR. WESLANDER: Objection, assumes facts</p> <p>5 not in evidence and leading.</p> <p>6 THE WITNESS: Absolutely not.</p> <p>7 Q. (By Mr. Nash) Would you have paid any</p> <p>8 money whatsoever to have them installed?</p> <p>9 MR. WESLANDER: Object. Same objection.</p> <p>10 That also calls for a legal conclusion.</p> <p>11 Q. (By Mr. Nash) You can answer.</p> <p>12 A. No, I would not have.</p> <p>13 Q. Knowing what you know today about those</p> <p>14 products that were installed in your home, do you</p> <p>15 believe that you overpaid in any amount for the</p> <p>16 remodel of your home, which, naturally, included the</p> <p>17 installation of those products?</p> <p>18 MR. WESLANDER: Objection to form;</p> <p>19 leading, calls for a legal conclusion.</p> <p>20 THE WITNESS: I believe that is true.</p> <p>21 Q. (By Mr. Nash) If the judge presiding over</p> <p>22 this case eventually certifies a class and appoints</p> <p>23 you as a class representative of that class, will you</p> <p>24 honestly and faithfully advance the interests of all</p> <p>25 members of that class?</p> |

KELLY MCCOY

January 16, 2017

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| <p style="text-align: right;">Page 106</p> <p>1 MR. WESLANDER: Objection; leading, calls<br/>2 for speculation, and calls for a legal<br/>3 conclusion.<br/>4 THE WITNESS: Yes, I would.<br/>5 MR. NASH: Thank you very much. That's<br/>6 all I have.<br/>7 FURTHER EXAMINATION<br/>8 BY MR. WESLANDER:<br/>9 Q. Just briefly, Mr. McCoy, you were asked<br/>10 about the potential existence of mold that you don't<br/>11 know about or other property damage that you don't<br/>12 know about. To the extent that you're testifying<br/>13 about that, you are just speculating at this point,<br/>14 correct?<br/>15 A. Yes.<br/>16 MR. WESLANDER: Nothing further.<br/>17 (Deposition concluded at 11:15 a.m.)<br/>18 (Pursuant to Rule 30(e) of the Federal<br/>19 Rules of Civil Procedure and/or O.C.G.A.<br/>20 9-11-30(e), signature of the witness has been<br/>21 reserved.)<br/>22<br/>23<br/>24<br/>25</p>                                | <p style="text-align: right;">Page 108</p> <p style="text-align: center;">DISCLOSURE</p> <p>1<br/>2<br/>3 STATE OF GEORGIA<br/>4 COUNTY OF COBB<br/>5 DEPOSITION OF: Kelly Lee McCoy<br/>6 DATE OF DEPOSITION: January 16, 2017<br/>7<br/>8 Pursuant to Article 8.b. of the Rules and<br/>9 Regulations of the Board of Court Reporting of the<br/>10 Judicial Council of Georgia, I make the following<br/>11 disclosure:<br/>12<br/>13 I, Deborah Longoria, am a Georgia Certified<br/>14 Court Reporter. I am here as an independent<br/>15 contractor for U.S. Legal Support, Inc.<br/>16<br/>17 U.S. Legal Support, Inc., was contacted by the<br/>18 offices of Lathrop &amp; Gage, LLP, to provide court<br/>19 reporting services for this deposition. The firm<br/>20 will not be taking this deposition under any contract<br/>21 that is prohibited by O.C.G.A. 15-14-37 (a) and (b).<br/>22<br/>23 U.S. Legal Support, Inc., has an agreement to<br/>24 provide reporting services with Lathrop &amp; Gage, LLP,<br/>25 the terms of which are as follows: Any and all<br/>special rates and/or services are available to all<br/>parties involved in this litigation.<br/><br/>DEBORAH P. LONGORIA, RPR, CCR B-1557</p> |
| <p style="text-align: right;">Page 107</p> <p>1 COURT REPORTER CERTIFICATE<br/>2<br/>3 STATE OF GEORGIA:<br/>4 COUNTY OF COBB:<br/>5<br/>6 I hereby certify that the foregoing<br/>7 transcript was reported, as stated in the caption,<br/>8 and the questions and answers thereto were reduced to<br/>9 typewriting under my direction; that the foregoing<br/>10 pages represent a true, complete, and correct<br/>11 transcript of the evidence given upon said<br/>12 deposition, and I further certify that I am not of<br/>13 kin or counsel to the parties in the case; am not in<br/>14 the employ of counsel for any of said parties; nor am<br/>15 I in any way interested in the result of said case.<br/>16<br/>17 This, the 28th day of January 2017.<br/>18<br/>19 <br/>20 Deborah P. Longoria, RPR, CCR-B-1557<br/>21<br/>22<br/>23<br/>24<br/>25</p> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |



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